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No. 2741

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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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W. L. SPALDING, and the RELIANCE MINING  
COMPANY, a corporation,

Appellants,

vs.

S. A. MARTIN,

Appellee.

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**Transcript of Record.**

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Upon Appeal from United States District Court for  
the Territory of Alaska, Fourth  
Division.

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**Filed**

FEB 1 - 1916

**F. D. Monckton,**  
**Clerk.**







No. \_\_\_\_\_

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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the Territory of Alaska, Fourth  
Division.

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Due service and receipt of three copies hereof  
admitted this..... day of January, 1916.

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Attorney for Appellee.

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**Names and Addresses of Attorneys of Record.**

McGOWAN & CLARK, JOHN K. BROWN, THOS.

A. McGOWAN, and JOHN A. CLARK, Attorneys  
for Defendants and Appellees, Fairbanks, Alaska.

MORTON E. STEVENS, and THOMAS A MAR-  
QUAM, Attorneys for Plaintiff and Apellee, Fair-  
banks, Alaska.

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In the District Court for the Territory of Alaska,  
Fourth Judicial Division.

No. 1995.

S. A. MARTIN,

Plaintiff,

vs.

W. L. SPAULDING and RAYMOND BRUM-  
BAUGH, conducting mining operations under the  
name of the SOO MINING COMPANY, W. L.  
SPAULDING, and the RELIANCE MINING  
COMPANY, a corporation,

Defendants.

---

**Stipulation Relative to Printing Record.**

It is hereby stipulated that, in printing the papers  
and records to be used on the hearing on appeal taken  
in the above-entitled cause, for the consideration of  
the Circuit Court of Appeals for the Ninth Circuit,  
the title of the Court and cause in full on all papers  
shall be omitted, except on the first page of said  
record, and that there shall be inserted, in place of  
said title, in all papers used as a part of said record,

the words "Title of Court and Cause"; also, that all indorsements on all papers, except the clerk's filing marks, and admissions of service, need not be printed.

Dated at Fairbanks, Alaska, this 30th day of November 1915.

McGOWAN & CLARK

JOHN K. BROWN

Attorneys for Appellants.

MORTON E. STEVENS,

Attorney for Appellee.

(Indorsed: "Filed in the District Court Territory of Alaska, 4th Div. Nov. 30, 1915. J. E. Clark, Clerk, by Sidney Stewart, Deputy.")

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[Title of Court and Cause.]

**Praecipe for Transcript.**

To J. E. Clark, Clerk of the above-entitled Court:

You will please prepare transcript of the record in the above-entitled cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, upon the appeal heretofore perfected to said Court, and will include in said transcript the following papers and records, to-wit:

1. Complaint.
2. Motion of Reliance Mining Company to strike certain portions of complaint.
3. Motion of Reliance Mining Company to make complaint more definite and certain in certain particulars.



4. Stipulation of attorneys for appellants and appellee that motions of other defendants be omitted from the record.
5. Journal entry overruling motions of the defendants to strike portions of the complaint and overruling motions to make more definite and certain.
6. Demurrer of Reliance Mining Company.
7. Stipulation of attorneys for appellants and appellee that demurrers of other defendants be omitted from the record.
8. Journal entry overruling demurrers of all defendants.
9. Separate answer of Reliance Mining Company.
10. Separate answer of Raymond Brumbaugh and W. L. Spaulding.
11. Reply.
12. Bill of exceptions and order settling and allowing same.
13. Findings of fact and conclusions of law signed by the Court.
14. Judgment and decree.
15. Assignment of errors.
16. Petition for appeal.
17. Order allowing appeal and fixing amount of cost bond.
18. Cost bond on appeal.
19. Citation on appeal.
20. Designation of place for hearing appeal.
21. Order extending time within which to file appeal.

22. Praecipe for transcript.

23. Stipulation relative to printing of record.

This transcript to be prepared as required by law and the orders and rules of this Court and of the United States Circuit Court of Appeals for the Ninth Circuit, and to be filed in the office of the clerk of said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, on or before the first day of February, A. D. one thousand nine hundred sixteen, pursuant to order of this Court extending time.

Fairbanks, Alaska, this 8th day of December, A. D. 1915.

McGOWAN & CLARK

JOHN K. BROWN

Attorneys for Defendants and Appellants.

(Indorsed: Filed in the District Court, Territory of Alaska, 4th Div., Dec. 8, 1915. J. E. Clark, Clerk, by Sidney Stewart, Deputy.)

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[Title of Court and Cause.]

**Complaint.**

Comes now the plaintiff and for cause of action against the defendants alleges:

I.

That at all times herein mentioned the defendants W. L. Spaulding and Raymond Brumbaugh were mining co-partners conducting mining operations under the firm name and style of the SOO MINING COMPANY;



II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Pricinct, Alaska;

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was and now is the owner and reputed owners of said Soo Quartz Mining claim above described.

V.

That prior to and about the 28th day of July, 1913, the plaintiff and the said defendants, W. L. Spaulding and Raymond Brumbaugh, mining co-partners as aforesaid, for themselves and as agents for said owners of said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed plaintiff to work and labor upon and in said Soo

Quartz Mining Claim for the price of five (\$5.00) dollars per day, besides board and lodging; and that in pursuance of said agreement plaintiff performed seventy-three and one-half ( $73\frac{1}{2}$ ) days labor in and upon said Soo Quartz Mining Claim, in assisting in running tunnels and stopes and in the working and development and improvement of the said Soo Quartz Mining Claim between the 28th day of July, 1913, and the 8th day of October, 1913, inclusive, at the rate of \$5.00 per day as aforesaid, which labor above described is of the value of three hundred and sixty-two and 50-100 (\$362.50) dollars. That no part of said sum of \$362.50 has been paid to plaintiff and since the said 8th day of October, 1913, there has been and now is due to plaintiff the sum of three hundred and sixty-two and 50-100 dollars on account of said labor above described besides interest at the legal rate from said last mentioned date.

## VI.

That on the 7th day of November, 1913, plaintiff duly filed and recorded in the office of the Commissioner and ex-officio Recorder for the Fairbanks Precinct, Alaska, in which Precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of plaintiff's demand after deducting all just credits and set-offs, with the name of the owner or reputed owners of said mining ground, and containing also the name of the persons who employed plaintiff as aforesaid, together with a statement of the terms



of the agreement between plaintiff and said employers and the condition of said contract, and also a description of the property sought to be charged with labor lien in the premises, a copy of which lien is hereto attached and marked "Plaintiff's Exhibit A" to which reference is hereby made and which exhibit is hereby made a part of this complaint.

#### VII.

That the work and labor performed by plaintiff as aforesaid, was performed with the knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in said Soo Quartz Mining Claim and machinery and improvement situated thereon shall be subject to the lien of plaintiff above mentioned.

#### VIII.

That plaintiff has paid the sum of Eleven and Seventy-five hundredths (\$11.75) Dollars as a necessary charge and expense for preparing and recording said lien, to-wit: Four Dollars and Twenty-five cents for recording thereof, and Seven Dollars and Fifty Cents for preparing the same.

#### IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit, in the above entitled court.

FOR A FURTHER AND SECOND CAUSE  
OF ACTION AGAINST THE DEFENDANTS

## PLAINTIFF ALLEGES:

## 1.

That at all times mentioned, the defendants W. L. Spaulding and Raymond Brumbugh were mining copartners, conducting mining operations under the firm name and style of the SOO MINING COMPANY;

## II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada.

## III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome Creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number Nine, in the Fairbanks Recording Precinct, Alaska;

## IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim, above described.

## V.

That on or about the 9th day of October, 1913,



the plaintiff and the said defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners aforesaid, for themselves and as agents for the Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed plaintiff to work and labor upon and in said Soo Quartz Mining Claim for the price of Five Dollars per day, besides board and lodging; and that in pursuance of said agreement, plaintiff performed Fifteen and One-half days labor, as a miner, at the said price of Five Dollars per day, and that on or about the 25th day of October, 1913, the plaintiff and the said defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves, and as agents for the said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement, wherein the defendants, W. L. Spaulding and Raymond Brumbaugh, employed plaintiff to work and labor upon and in said Soo Quartz Mining Claim, as Foreman of said mine, for the price of Eight Dollars per day, besides board and lodging, and in pursuance of said agreement, plaintiff performed Fifteen and One-half days labor as said Foreman, all of which work aforesaid, both as a laborer and Foreman, was performed in assisting running tunnels and stopes, in the working, development and improvement of said Soo Quartz Mining Claim, and said work was performed between the 9th day of October, 1913, and

the 10th day of November, 1913, inclusive, and at the rate of Five Dollars per day as a common laborer, and at Eight Dollars as Foreman aforesaid; all of which labor above described, is of the agreed and reasonable value of Two hundred and One and Fifty One hundredths (\$201.50) Dollars. That no part of said sum of \$201.50 has been paid to plaintiff, save and except the sum of Seventy-two Dollars and Forty-five Cents, and no more. And since the said 10th day of November, 1913, there has been, and now is, due to plaintiff the sum of One Hundred and Twenty-eight Dollars and Five Cents, on account of said labor above described, besides interest at the legal rate from said last mentioned date.

## 6.

That on the second day of December, 1913, Plaintiff duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Precinct, Alaska, in which precinct said property is situated, his claim of lien duly verified by his oath, which claim of lien contained a statement of plaintiff's demand, after deducting all just credits and set-offs, with the name of owner or reputed owner of said mining claim, and contained also the names of the persons who employed plaintiff as aforesaid, together with a statement of the terms of the agreement between plaintiff and said employers and the condition of said contract and employment; and also a description of the property sought to be charged with labor lien in the premises, a copy of which lien



is hereto attached and marked "plaintiff's exhibit A I.," to which reference is hereby made and which exhibit is hereby made a part of this complaint.

VII.

That the work and labor performed by plaintiff as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in said Soo Quartz Mining Claim shall be subject to the lien of plaintiff above mentioned.

VIII.

That plaintiff has paid the sum of Six Dollars and Seventy-five Cents for the preparation and recording of said lien.

IX.

That the sum of Seventy-five dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

FOR A FURTHER AND THIRD CAUSE OF ACTION AGAINST THE DEFENDANTS PAINTIFF ALLEGES:

I.

That at all times herein mentioned the defendants W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

## II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada.

## III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

## IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

## V.

That upon the First day of September, 1913, one John Curry and the defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for Said Reliance Mining Company, owners of said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed the said John Curry to work

and labor as engineer and mill man upon and in said Soo Quartz Mining Claim, for the price of Five Dollars per day, besides board and lodging; and that in pursuance of said agreement, said John Curry performed Thirty-Eight days labor in and upon said Soo Quartz Mining Claim as engineer and mill man in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim, and the mine situated therein, between the First Day of September, 1913, and the Eighth day of October, 1913, both inclusive, at the rate of five dollars per day as aforesaid, which labor, above described, is of the value of One Hundred Ninety (\$190.00) Dollars. That no part of said sum of One Hundred Ninety Dollars has been paid; and since the Eighth day of October, 1913, there has been, and now is, from said defendants, the sum of One Hundred Ninety Dollars due on account of said labor above described, besides interest at the legal rate from said last mentioned date.

## VI.

That on the 7th day of November, 1913, the said John Curry duly filed and recorded, in the office of the commissioner and ex-officio recorder for the Fairbanks Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owner of said mining ground; and also the name of the



person who employed the said Curry as aforesaid, together with a statement of the terms of agreement between said Curry and said employers and the condition of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit B", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

#### VII.

That the work and labor performed by the said John Curry as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim, and the machinery and improvements situated thereon, shall be subject to the lien of the said John Curry above mentioned.

#### VIII.

That the said John Curry has paid the sum of Eleven Dollars and Seventy-five cents as a necessary charge and expense for preparing and recording said lien, to-wit: Four Dollars and Twenty-five cents for recording thereof, and Seven Dollars and Fifty cents for preparing the same.

#### IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled

court.

X.

That prior to the commencement of this suit, to-wit; on or about the Fourth day of December, 1913, for a valuable consideration, the said John Curry assigned and transfered said account and lien to the plaintiff herein.

FOR A FURTHER AND FOURTH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

I.

That at all times herein mentioned the defendants W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river,

and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

V.

That on or about the 9th day of October, 1913, the said John Curry and the said defendants, W. L. Spaulding and Raymond Brumbaugh, mining co-partners as aforesaid, for themselves and as agents for the said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed plaintiff to work and labor as an engineer and millman upon the said Soo Quartz Mining Claim for the price of Five Dollars per day besides board and lodging; and that in pursuance of said agreement plaintiff performed Thirty-six and one-half days labor as engineer and millman in and upon the said Soo Quartz Mining Claim and the mine situate therein in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim and the mine therein located, between the 9th day of October, 1913, and the 9th day of November, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor, above described, is of the value of One Hundred



Eighty-Two Dollars and fifty cents. That no part of said sum of One Hundred and Eighty-two Dollars and Fifty cents has been paid, save and except the sum of Fifty-seven Dollars and Forty Cents; and that since the said 9th day of November, 1913, their has been due and owing from the said defendants, on account of said labor, the sum of One Hnundred Twenty-Five Dollars and Ten Cents, besides interest at the legal rate from said last mentioned date.

VI.

That on the second day of December, 1913, the said John Curry duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Recording Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement af his demand after deducting all just credits and set-offs, with the name of the owner or reputed owners of said mining claim and containing also the names of the persons who employed him as aforesa'd; together with a statement of the terms of agreement between John Curry and said employers, and the conditions of said contract; and also a description of the property sought to be charged with a labors lien in the premises, a copy of which lien is hereto attached and marked "plaintiff exhibit B I," to which reference is hereby made and which exhibit is hereby made a part of this complaint.

VII.

That the work and labor performed by said John

Curry as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that their interest in the said Soo Quartz Mining Claim and the machinery and improvements situated thereon, shall be subject to the lien of the said John Curry above mentioned.

### VIII.

That the said John Curry has paid the sum of Six Dollars and Seventy-five Cents as a necessary charge and expense for preparing and recording said lien.

### IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

### X.

That prior to the commencement of said suit, to-wit: on or about the fourth day of December, 1913, for a valuable consideration, the said John Curry assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND FIFTH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

### I.

That at all times herein mentioned the defendants, W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under

the firm name and style of the SOO MINING COMPANY.

II.

That at all times herein mentioned, said defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

V.

That upon the 29th day of August, 1913, the said defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for the said Reliance Mining Company, entered into an agreement with one John Nyland whereby the said defendants, W. L. Spaulding and



Raymond Brumbaugh employed the said John Nyland to work and labor upon and in the said Soo Quartz Mining Claim, for the price of Five Dollars per day, besides board and lodging; and that in pursuance of said agreement the said John Nyland performed Forty-One days labor in and upon the said Soo Quartz Mining Claim in assisting in running tunnels and stopes and in the working, development and improvement of said Soo Quartz Mining Claim, and the mine situated therein, between the 29th day of August, 1913, and the 8th day of October, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor above described is of the value of Two Hundred Five (\$205.00) Dollars. That no part of said sum of Two Hundred Five Dollars has been paid; and since the said 8th day of October, 1913, there has been and is now due from the said defendants W. L. Spaulding and Raymond Brumbaugh, on account of said labor above described, the sum of Two Hundred Five (\$205.00) Dollars, besides interest at the legal rate from said last mentioned date

## VI.

That on the 7th day of November, 1913, the said John Nyland duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Precinct, Alaska, and in which Precinct said property is situated, his claim of lien, duly verified by his oath; which claim of lien contained a statement of plaintiff's demand after deducting all just

credits and set-offs, with the names of the owners or reputed owners of said mining claim, and containing also the names of the persons who employed the said John Nyland as aforesaid, together with a statement of the terms of the agreement between the said John Nyland, and said employers, and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit C", to which reference is hereby made, and which exhibit is hereby made a part of this complaint.

#### VII.

That the work and labor performed by said John Nyland as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company and its officers; and the said Reliance Mining Company consented that its interest in said Soo Quartz Mining Claim, and the machinery and improvements situated thereon, shall be subject to the lien of said John Nyland above mentioned.

#### VIII.

That the said John Nyland has paid the sum of Eleven Dollars and Seventy-Five Cents as a necessary charge and expense for preparing and recording said lien, to-wit: Four Dollars and Twenty-Five Cents for recording thereof, and Seven Dollars and Fifty-Cents for preparing the same.

#### IX.

That the sum of Seventy-Five Dollars is a reason-

able attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

X.

That prior to the commencement of said suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said John Nyland assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND SIXTH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

I.

That at all times herein mentioned the defendants W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile North-



west of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

#### IV.

That at all times herein mentioned, the defendant, the Reliance Mining Comany, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

#### V.

That on or about the 9th day of October, 1913, the said John Nyland and the said defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for the said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed said John Nyland to work and labor upon the said Soo Quartz Mining Claim for the price of five dollars per day besides board and lodging; and that in pursuance of said agreement plaintiff performed Twenty-Eight and One-half days labor in and upon the said Soo Quartz Mining Claim and the mine situate therein in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim and the mine therein located, between the 9th day of October, 1913, and the 9th day of November, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor above de-

scribed, is of the value of One Hundred Forty-Two Dollars and Fifty Cents. That no part of said sum of One Hundred Forty-Two Dollars and Fifty Cents has been paid to plaintiff, save and except the sum of Fifty-Six Dollars and Eighty-One Cents, and no more. And since the said day of November, 1913, there has been, and now is due to plaintiff, the sum of Eighty-Five Dollars and Sixty-Nine Cents, on account of said labor above described, besides interest at the legal rate from said last mentioned date.

## VI.

That on the second day of December, 1913, the said John Nyland duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Recording Precinct Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owners of said mining claim and containing also the names of the persons who employed him as aforesaid; together with a statement of the terms of agreement between said said John Nyland and said employers, and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit C I", to which reference is hereby made and which exhibit is hereby made a

part of this complaint.

VII.

That the work and labor performed by the said John Nyland as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in said Soo Quartz Mining Claim, and the machinery and improvements situated thereon, shall be subject to the lien of the said John Nyland above mentioned.

VIII.

That the said John Nyland has paid the sum of Six Dollars and Seventy-five Cents as a necessary charge and expense for preparing and recording said lien.

IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

X.

That prior to the commencement of this suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said John Nyland assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND SEVENTH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:



## I.

That at all times herein mentioned the defendants, W. L. Spaulding and Raymond Brumbaugh, were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

## II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

## III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as leasees or reputed leasees, upon and in that certain lode quartz claim known as the Soo Quartz Mining Claim, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

## IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

## V.

That upon the 22nd day of July, 1913, the said defendants, W. L. Spaulding and Raymond Brum-

baugh, mining copartners as aforesaid, for themselves and as agents for the said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement with one Walfred Peterson whereby the said defendants, W. L. Spaulding and Raymond Brumbaugh employed the said Walfred Peterson to work and labor upon and in said Soo Quartz Mining Claim, for the price of five dollars per day, besides board and lodging; and that in pursuance of said agreement the said Walfred Peterson performed Seventy-Four (74) days labor in and upon the said Soo Quartz Mining Claim in assisting in running tunnels and stopes and in the working, development and improvement of said Soo Quartz Mining Claim, and the mine situated therein, between the 22nd day of July, 1913, and the 8th day of October, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor above described is of the value of Three Hundred Seventy (\$370.00) Dollars. That no part of said sum of Three Hundred Seventy Dollars has been paid to plaintiff, save and except the sum of Fifty Dollars, and no more. And since the said 8th day of October, 1913, there has been, and now is due to plaintiff, the sum of Three Hundred Twenty Dollars, on account of said labor above described, besides interest at the legal rate from said last mentioned date.

## VI.

That on the 7th day of November, 1913, the said Walfred Peterson duly filed and recorded in the

office of the commissioner and ex-officio recorder for the Fairbanks Precinct, Alaska, and in which precinct said property is situated, his claim of lien, duly verified by oath; which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owners of said mining claim, and containing also the names of the persons who employed the said Walfred Peterson as aforesaid, together with a statement of the terms of the agreement between the said Walfred Peterson, and said employers, and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is attached and marked "plaintiff's exhibit D", to which reference is hereby made, and which exhibit is hereby made a part of this complaint.

#### VII.

That the work and labor performed by said Wolfred Peterson as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers; and the said Reliance Mining Company consented that its interest in said Soo Quartz Mining Claim, and the machinery and improvements situated thereon, shall be subject to the lien of said Wolfred Peterson above mentioned.

#### VIII.

That the said Wolfred Peterson has paid the sum of Eleven Dollars and Seventy-Five Cents as a nec-



essary charge and expense for preparing and recording said lien, to-wit: Four Dollars and Twenty-Five cents for recording thereof, and Seven Dollars and Fifty Cents for preparing same.

IX.

That the sum of Seventy-Five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

X.

That prior to the commencement of said suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said Wolfred Peterson assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND EIGHTH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

That at all times herein mentioned the defendants W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned, the defendants, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defend-

ants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number, 9, in the Fairbanks Recording Precinct, Alaska:

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

V.

That on or about the 9th day of October, 1913, the said Walfred Peterson and the said defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for the said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants W. L. Spaulding and Raymond Brumbaugh, employed the said Walfred Peterson to work and labor upon the said Soo Quartz Mining Claim for the price of Five Dollars per day besides board and lodging; and that in pursuance of said agreement Walford Peterson performed Twenty-Five days labor in and upon the said Soo Quartz Mining Claim and the mine situate therein in assisting in running tunnels and stopes,

and in working, developing and improving the said Soo Quartz Mining Claim and the mine therein located, between the 9th day of October, 1913, and the 9th day of November, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor, above described, is of the value of One Hundred Twenty-Five (\$125.00) Dollars. That no part of said sum of One Hundred Twenty-Five Dollars has been paid, save and except the sum of Fifty-Seven Dollars and Twenty Cents, and that since the said 9th day of November, 1913, there has been due and owing from the said defendants, on account of said labor, the sum of Sixty-Seven Dollars and Eighty Cents (\$67.80), besides interest at the legal rate from said last mentioned date.

## VI.

That on the second day of December, 1913, the said Walfred Peterson duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Recording Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owners of said mining claim and containing also the names of the persons who employed him as aforesaid; together with a statement of the terms of agreement between said Walfred Peterson and said employer, and the conditions of said contract; and also a description of the prop-



erty sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit D I", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

#### VII.

That the work and labor performed by said Walfred Peterson as aforesaid, was performed with the knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Company consented that their interest in the said Soo Quartz Mining Claim and the machinery and improvements situated thereon, shall be subject to the lien of the said Walfred Peterson above mentioned.

#### VIII.

That the said Walfred Peterson has paid the sum of Six Dollars and Seventy-Five Cents as a necessary charge and expense for preparing and recording said lien.

#### IX.

That the sum of Seventy-Five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

#### X.

That prior to the commencement of said suit, to-wit: on or about the fourth day of December, 1913, for a valuable consideration, the said Walfred Peterson assigned and transferred said account and lien

to the plaintiff herein.

FOR A FURTHER AND NINTH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

I.

That at all times herein mentioned the defendants, W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned, said defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome Creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska.

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said

Soo Quartz Mining Claim above described.

V.

That upon the 29th day of July, 1913, one Al Meyers and the defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for said Reliance Mining Company, owners of said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed the said Al Meyers to work and labor upon and in said Soo Quartz Mining Claim, for the price of Five Dollars per day, besides board and lodging; and that in pursuance of said agreement, said Al Meyers performed Sixty-Nine and one-half days labor in and upon said Soo Quartz Mining Claim, in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim, and the mine situated therein, between the 29th day of July, 1913, and the 8th day of Oitober, 1913, both inclusive, at the rate of five dollars per day as aforesaid, which labor, above described, is of the value of Three Hundred and Forty-seven 50-100 Dollars (\$347.50). That no part of said sum of Three Hundred and Forty-seven 50-100 Dollars has been paid; and since said 8th day of October, 1913, there has been, and now is, from said defendants, the sum of Three Hundred and Forty-seven and 50-100 dollars due on account of said labor above described, besides interest at the legal rate from said last mentioned date.



## VI.

That on the 7th day of November, 1913, the said Al Meyers duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owner of said mining ground; and also the name of the person who employed the said Meyers as aforesaid, together with a statement of the terms of agreement between said Meyers and said employers and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit E", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

## VII.

That the work and labor performed by the said Al Meyers as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim, and the machinery and improvements situated thereon, shall be subject to the lien of the said Al Meyers above mentioned.

## VIII.

That the said Al Meyers has paid the sum of Eleven Dollars and Seventy-five Cents as a necessary charge and expense for preparing and recording said lien, to-wit; Four Dollars and Twenty-Five Cents for recording thereof, and Seven Dollars and Fifty Cents for preparing the same.

## IX.

That the sum of Seventy-Five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

## X.

That prior to the commencement of this suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said Al Meyers assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND TENTH CAUSE OF ACTION AGAINST THE DEFENDANT PLAINTIFF ALLEGES:

## I.

That at all times herein mentioned the defendants, W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting operations under the firm name and style of the SOO MINING COMPANY;

## II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation,

organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining claim above described.

V.

That on or about the 9th day of October, 1913, the said Al Meyers and the said defendants, W. L. Spaulding and Raymond Brumbaugh, mining co-partners as aforesaid, for themselves and as agents for the said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed the said Al Meyers to work and labor upon and in the said Soo Quartz Mining Claim for the price of Five Dollars per day besides board and lodging; and that in pur-



suance of said agreement the said Myers performed Twenty-Nine and one-half days labor in and upon the said Soo Quartz Mining Claim and the mine situate therein in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim and the mine therein located, between the 9th day of October, 1913, and the 9th day of November, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor, above described, is of the value of One Hundred Forty-seven Dollars and Fifty Cents (\$147.50). That no part of said sum of One Hundred and Forty-seven Dollars and Fifty Cents has been paid, save and except the sum of Fifty-four Dollars and Seventy-five Cents; and that since the said 9th day of November, 1913, there has been due and owing from the said defendants, on account of said labor, the sum of Ninety-two Dollars and Seventy-five Cents, besides interest at the legal rate from said last mentioned date.

## VI.

That on the second day of December, 1913, the said Al Meyers duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Recording Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owners of said mining claim and containing

also the names of the persons who employed him as aforesaid together with a statement of the terms of agreement between said Al Meyers and said employer, and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit E 1, to which reference is hereby made and which exhibit is hereby made a part of this complaint.

#### VII.

That the work and labor performed by said Al Meyers as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim and the Machinery and improvements situated thereon, shall be subject to the lien of the said Al Meyers above mentioned.

#### VIII.

That the said Al Meyers has paid the sum of Six Dollars and Seventy-five Cents as a necessary charge and expense for preparing and recording said lien.

#### IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

#### X.

That prior to the commencement of said suit, to-

wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said Al Meyers assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND ELEVENTH CAUSE  
OF ACTION AGAINST THE DEFENDANTS  
PLAINTIFF ALLEGES:

1.

That at all times herein mentioned the defendants, W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation, organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;



## IV.

That at all times herein mentioned, the defendant, The Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

## V.

That upon the 11th day of August, 1913, one John Kuhl and the defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for said Reliance Mining Company, owners of said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants W. L. Spaulding and Raymond Brumbaugh employed the said John Kuhl to work and labor upon and in said Soo Quartz Mining Claim, for the price of Five Dollars per day, besides board and lodging; and that in pursuance of said agreement, said John Kuhl performed Fifty-eight (58) days labor in and upon said Soo Quartz Mining Claim, in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim, and the mine situated therein, between the 11th day of August, 1913, and the 8th day of October, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor, above described, is of the value of Two Hundred and Ninety (\$290.00) Dollars. That no part of said sum of Two Hundred and Ninety Dollars has been paid; and since the said 8th day of October, 1913, there has been, and now is, from said defendants, the sum of

Two Hundred and Ninety Dollars due on account of said labor above described, besides interest at the legal rate from said last mentioned date.

## VI.

That on the 7th day of November, 1913, the said John Kuhl duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owner of said mining ground; and also the name of the person who employed the said John Kuhl as aforesaid, together with a statement of the terms of agreement between said John Kuhl and said employers and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit F", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

## VII.

That the work and labor performed by the said John Kuhl as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim, and the machinery and improvements situated thereon, shall be

subject to the lien of the said John Kuhl above mentioned.

VIII.

That the said John Kuhl has paid the sum of Eleven Dollars and Seventy-five Cents as a necessary charge and expense for preparing and recording said lien, to-wit: Four Dollars and Twenty-five Cents for recording thereof, and Seven Dollars and Fifty Cents for preparing the same.

IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

X.

That prior to the commencement of this suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said John Kuhl assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND TWELFTH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

I.

That at all times herein mentioned the defendants W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;



## II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation, organized and existing under and by virtue of the laws of the State of Nevada;

## III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

## IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

## V.

That on or about the 9th day of October, 1913, the said John Kuhl and the said defendants, W. L. Spaulding and Raymond Brumbaugh, mining co-partners as aforesaid, for themselves and as agents for the said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement where the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed the said

John Kuhl to work and labor upon the said Soo Quartz Mining Claim for the price of Five Dollars per day besides board and lodging; and that in pursuance of said agreement the said Kuhl performed Nineteen days Labor in and upon the said Soo Quartz Mining Claim and the mine situated therein in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim and the mine therein located, between the 9th day of October, 1913, and the 9th day of November, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid. which labor, above described, is of the value of Ninety Five (\$95.) Dollars. That no part of said sum of Ninety Five Dollars has been paid save and except the sum of Thirty-nine Dollars and Twenty-five Cents; and that since the said 9th day of November, 1913, there has been due and owing from the said defendants, on account of said labor, the sum of Fifty-five Dollars and Seventy-five Cents, besides interest at the legal rate from said last mentioned date.

## VI.

That on the 2nd day of December, 1913, the said John Kuhl duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Recording Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or

reputed owners of said mining claim and containing also the names of the persons who employed him as aforesaid; together with a statement of the terms of agreement between said John Kuhl and said employer, and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit F I", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

#### VII.

That the work and labor performed by said John Kuhl as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim and the machinery and improvements situated thereon, shall be subject to the lien of the said John Kuhl above mentioned.

#### VIII.

That the said John Kuhl has paid the sum of Six Dollars and Seventy-five cents as a necessary charge and expense for preparing and recording said lien.

#### IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

#### X.

That prior to the commencement of said suit, to-



wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said John Kuhl assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND THIRTEENTH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

I.

That at all times herein mentioned the defendants, W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

## IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

## V.

That upon the First day of September, 1913, one Olie Simonson and the defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for said Reliance Mining Company, owners of said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed the said Olie Simonson to work and labor upon and in said Soo Quartz Mining Claim, for the price of Five Dollars per day, besides board and lodging; and tht in pursuance of said agreement, said Olie Simonson performed Thirty-two days labor in and upon said Soo Quartz Mining Claim, in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim, and the mine situated therein, between the First day of September, 1913, and the 8th day of October, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor, above described, is of the value of One Hundred and Sixty (\$160.00) Dollars. That no part of said sum of One Hundred and Sixty Dollars has been paid; and since the said 8th day of October, 1913, there has been, and now is, from said defendants, the sum of

One Hundred and Sixty Dollars due on account of said labor above described, besides interest at the legal rate from said last mentioned date.

#### VI.

That on the 7th day of November, 1913, the said Olie Simonson duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owner of said mining ground; and also the name of the person who employed the said Simonson as aforesaid, together with a statement of the terms of agreement between said Simonson and said employers and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit G", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

#### VII.

That the work and labor performed by said Olie Simonson as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim, and the ma-



chinery and improvements situated thereon, shall be subject to the lien of the said Olie Simonson above mentioned.

### VIII.

That the said Olie Simonson has paid the sum of Eleven Dollars and Seventy-five Cents as a necessary charge and expense for preparing and recording said lien, to-wit: Four Dollars and Twenty-five Cents for recording thereof, and Seven Dollars and Fifty Cents for preparing the same.

### IX.

That the sum of Seventy-five dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

### X.

That prior to the commencement of this suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said Olie Simonson assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND FOURTEENTH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

### I.

That at all times herein mentioned the defendants, W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim number 9, in the Fairbanks Recording Precinct, Alaska;

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

V.

That on or about 9th day of October, 1913, the said Olie Simonson and the said defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for the said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed the said Ole

Simonson to work and labor upon the said Soo Quartz Mining Claim; and that in pursuance of said agreement the said Simonson performed Twenty-five (25) days labor in and upon the said Soo Quartz Mining Claim and the mine situate therein in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim and the mine therein located, between the 9th day of October, 1913, and the 9th day of November, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor, above described, is of the value of One Hundred and Twenty-five (\$125.00) Dollars: That no part of said sum of One Hundred and Twenty-five Dollars has been paid, save and except the sum of Fifty-one Dollars and Sixty-five Cents; and that since the said 9th day of November, 1913, there has been due and owing from the said defendants, on account of said labor, the sum of Seventy-three Dollars and Thirty-five Cents, besides interest at the legal rate from said last mentioned date.

## VI.

That on the 2nd day of December, 1913, the said Olie Simonson duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Recording Precinct, Alaska, in which said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed



owners of said mining claim and containing also the names of the person who employed him as aforesaid; together with a statement of the terms of agreement between said Olie Simonson and said employer, and the conditions of said contract and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit G I", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

#### VII.

That the work and labor performed by said Olie Simonson as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim and the machinery and improvements situated thereon, shall be subject to the lien of the said Olie Simonson above mentioned.

#### VIII.

That the said Olie Simonson has paid the sum of Six Dollars and Seventy-five cents as a necessary charge and expense for preparing and recording said lien.

#### IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

## X.

That prior to the commencement of said suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said Olie Simonson assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND FOURTEENTH CAUSE OF ACTION AGAINST THE DEFENDANT PLAINTIFF ALLEGES: .

## I.

That at all times herein mentioned the defendants, W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

## II.

That at all times herein mentioned, said defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

## III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prsopecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz mining claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite placer mining claim Number 9, in the Fair-

banks Recording Precinct, Alaska;

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

V.

That upon the 14th day of August, 1913, one Martin Milland and the defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for said Reliance Mining Company, owners of said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed the said Martin Milland to work and labor as blacksmith upon and in said Soo Quartz Mining Claim, for the price of Six Dollars per day, besides board and lodging; and that in pursuance of said agreement, said Martin Milland performed Fifty-three and one-half ( $53\frac{1}{2}$ ) days labor in and upon said Soo Quartz Mining Claim, as blacksmith, in assisting in running tunnels and stopes, and in the working, developing and improving the said Soo Quartz Mining Claim, and the mine situated therein, between the 14th day of August, 1913, and the 8th day of October, 1913, both inclusive, at the rate of six dollars per day as aforesaid, which labor, above described, is of the value of Three Hundred Twenty-one (\$321.00) Dollars: That no part of said sum of Three Hundred Twenty-one Dollars has been paid,



save and except the sum of Fifty (\$50.00) Dollars, and no more; And since the said 8th day of October, 1913, there has been, and now is, from said defendants, the sum of Two Hundred and Seventy-one (\$271.00) Dollars due on account of said labor above described, besides interest at the legal rate from said last mentioned date.

## VI.

That on the 7th day of November, 1913, the said Martin Milland duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owner of said mining ground; and also the name of the person who employed the said Martin Milland as aforesaid, together with a statement of the terms of agreement between said Milland and said employers and the condition of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit H", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

## VII.

That the work and labor performed by the said Martin Milland as aforesaid, was performed with a knowledge and consent of the said Reliance Mining

Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim, and the machinery and improvements situated thereon, shall be subject to the lien of the said Martin Milland above mentioned.

### VIII.

That the said Martin Milland has paid the sum of Eleven Dollars and Seventy-five Cents as a necessary charge and expense for preparing and recording said lien, to-wit: Four Dollars and Twenty-five Cents for recording thereof, and Seven Dollars and Fifty Cents for preparing the same.

### IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

### X.

That prior to the commencement of this suit, to-wit: on or about the Fourth Day of December, 1913, for a valuable consideration, the said Martin Milland assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND FIFTEENTH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

#### 1.

That at all times herein mentioned the defendants, W. L. Spaulding and Raymond Brumbaugh were

mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

## II.

That at all times herein mentioned, said defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

## III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

## IV.

That at all times herein mentioned the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

## V.

That upon the 9th day of October, 1913, one Martin Milland and the defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for said Reliance Mining Company, owners of the said Soo Quartz



Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed the said Martin Milland to work and labor upon and in said Soo Quartz Mining Claim, for the price of Six Dollars per day, besides board and lodging; and that in pursuance of said agreement, said Martin Milland performed Thirty-two-days labor in and upon said Soo Quartz Mining Claim as blacksmith, in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim, and the mine therein situated, between the 9th day of October, 1913, and the 9th day of November, 1913, both inclusive, at the rate of Six Dollars per day as aforesaid, which labor, above described, is of the value of One Hundred and Ninety-two (\$192.00) Dollars: That no part of said sum of One Hundred and Ninety-two Dollars has been paid, save and except the sum of Sixty-nine Dollars and Fifty Cents, and no more. And since the said day of November, 1913, there has been, and now is due to plaintiff the sum of One Hundred and Twenty-two Dollars and Fifty Cents, on account of said labor above described, besides interest at the legal rate from said last mentioned date.

## VI.

That on the 2nd day of December, 1913, the said Martin Milland duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Recording Precinct, Alaska, in which pre-

cinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owners of said mining claim and containing also the names of the persons who employed him as aforesaid; together with a statement of the terms of agreement between said Martin Milland and said employer, and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit H 1", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

## VII.

That the work and labor performed by said Martin Milland as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim and the machinery and improvements situated thereon, shall be subject to the lien of the said Martin Milland above mentioned.

## VIII.

That the said Martin Milland paid the sum of Six Dollars and Seventy-five cents as a necessary charge and expense for preparing and recording said lien.

IX.

That the sum of Seventy-five dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

X.

That prior to the commencement of said suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration said Martin Milland assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND SIXTEENTH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

I.

That at all times herein mentioned the defendants W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing and working as lessees or reputed lessees, upon and in that certain lode



quartz claim known as the SOO QAURTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

V.

That upon the 25th day of September, 1913, one Steve Paskalish and the defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for said Reliance Mining Company, owners of said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed the said Steve Paskalich to work and labor upon and in said Soo Quartz Mining Claim, for the price of Five Dollars per day, besides board and lodging; and that in pursuance of said agreement, said Steve Paskalich performed Thirteen and one-half ( $13\frac{1}{2}$ ) days labor in and upon said Soo Quartz Mining Claim, in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim, and the mine situated therein, between the 25th day of September, 1913, and the 8th day of October, 1913, both inclus-

ive, at the rate of five dollars per day as aforesaid, which labor, above described, is of the value of Sixty-seven and 50-100 (\$67.50) Dollars: That no part of said sum of Sixty-seven Dollars and Fifty cents has been paid; and since the said 8th day of October, 1913, there has been, and now is due, from said defendant, the sum of Sixty-seven Dollars and Fifty cents on account of said labor above described, besides interest at the legal rate from said last mentioned date.

## VI.

That on the 7th day of November, 1913, the said Steve Paskalich duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owner of said mining ground; and also the name of the person who employed the said Paskalich as aforesaid, together with a statement of the terms of agreement between said Paskalich and said employers and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit I", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

## VII.

That the work and labor performed by the said Steve Paskalich as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim, and the machinery and improvement situated thereon, shall be subject to the lien of the said Steve Paskalich above mentioned.

## VIII.

That the said Steve Paskalich has paid the sum of Eleven Dollars and Seventy-five cents as a necessary charge and expense for preparing and recording said lien, to-wit: Four Dollars and Twenty-five cents for recording thereof, and seven Dollars and Fifty cents for preparing the same.

## IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

## X.

That prior to the commencement of this suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said Steve Paskalich assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND SEVENTEENTH



CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

I.

That at all times herein mentioned the defendants W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

## V.

That on or about the 9th day of October, 1913, the said Steve Paskalich and the said defendants, W. L. Spaulding and Raymond Brumbaugh, mining co-partners as aforesaid, for themselves and as agents for the said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh employed the said Steve Paskalich to work and labor upon the said Soo Quartz Mining Claim for the price of Five Dollars per day besides board and lodging; and that in pursuance of said agreement said Paskalich performed Twenty-five and one-half days labor in and upon the said Soo Quartz Mining Claim and the mine situate therein in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim and the mine therein located, between the 9th day of October, 1913, and the 9th day of November, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor, above described, is of the value of One Hundred and Twenty-seven Dollars and fifty cents: That no part of said One Hundred and Twenty-seven Dollars and fifty cents has been paid, save and except the sum of Fifty-one Dollars and Seventy-five cents, and no more; and that since the 9th day of November, 1913, there has been due and owing from the said defendants, on account of said labor, the sum of Seventy-five Dollars and Seventy-five cents, be-

sides interest at the legal rate from said last mentioned date.

## VI.

That on the 2nd day of December, 1913, the said Steve Paskalich duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Recording Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after dedcting all just credits and set-offs, with the name of the owner or reputed owner of said mining claim and containing also the names of the persons who employed him as aforesaid; together with a statement of the terms of agreement between said Steve Paskalich and said employer, and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit I, 1," to which reference is hereby made and which exhibit is hereby made a part of this complaint.

## VII.

That the work and labor performed by the said Steve Paskalich as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in said Soo Quartz Mining Claim shall be subject to the lien of plaintiff above mentioned.



## VIII.

That the said Steve Paskalich has paid the sum of Six Dollars and Seventy-five cents as a necessary charge and expense for preparing and recording said lien.

## IX.

That the sum of Seventy-five dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

## X.

That prior to the commencement of said suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said Steve Paskalich assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND EIGHTEENTH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

## I.

That at all times herein mentioned the defendants W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

## II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

## III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome Creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska

## IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

## V.

That upon the 25th day of August, 1913, one H. H. Dech and the defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement wherein the said defendant, W. L. Spanulding and Raymond Brumbaugh, employed the said H. H. Deck, to work and labor upon and in said Soo Quartz Mining Claim, for the price of Five Dollars per day, besides board and lodging; and that in pursuance of said agreement, said H. H. Dech performed Sixty-one and One-half days labor in and upon said Soo

Quartz Mining Claim, in assisting in running tunnels and stopes, and in the working, developing and improving the said Soo Quartz Mining claim, and the mine situated therein, between the 5th day of August, 1913, and the 8th day of October, 1913, both inclusive, at the rate of five dollars per day as aforesaid, which labor, above described, is of the value of Three Hundred and Seven Dollars and Fifty cents, (\$307.50). That no part of the said sum of Three Hundred and Seven Dollars and Fifty cents has been paid, save and except the sum of Twenty (\$20.00) Dollars, and no more; and since the said 8th day of October, 1913, there has been, and now is, from said defendants, the sum of Two Hundred and Eighty-seven Dollars and Fifty cents due on account of said labor above described, besides interest at the legal rate from said last mentioned date.

## VI.

That on the 7th day of November, 1913, the said H. H. Dech duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owner of said mining ground; and also the name of the person who employed the said Dech as aforesaid, together with a statement of the terms of agreement



between said Dech and said employers and the condition of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff exhibit J", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

VII.

That the work and labor performed by the said H. H. Deck as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim, and the improvements and machinery situated thereon, shall be subject to the lien of the said H. H. Deck above mentioned.

VIII.

That the said H. H. Deck has paid the sum of Eleven Dollars and Seventy-five cents as a necessary charge and expense for preparing and recording said lien, to-wit: Four Dollars and Twenty-five cents for recording thereof, and Seven Dollars and Fifty cents for preparing the same.

IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

## X.

That prior to the commencement of this suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said H. H. Deck assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND NINETEENTH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

## I.

That at all times herein mentioned the defendants, W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

## II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

## III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9,

in the Fairbanks Recording Precinct, Alaska;

IV.

That at all times herein mentioned, the defendant, the Reliance Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

V.

That on or about the 9th day of October, 1913, one H. H. Dech and the said defendants, W. L. Spaulding and Raymond Brumbaugh, mining co-partners as aforesaid, for themselves and as agents for the said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed the said H. H. Dech to work and labor upon the said Soo Quartz Mining Claim for the price of Five Dollars per day besides board and lodging; and that in pursuance of said agreement the said Dech performed fourteen and one-half days labor in and upon the said Soo Quartz Mining Claim and the mine situate therein in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim and the mine therein located, between the 9th day of October, 1913, and the 9th day of November, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor, above described, is of the value of Seventy-two (\$72.50) Dollars and Fifty Cents: That no part of said sum of Seventy-two Dollars and



Fifty cents has been paid, save and except the sum of Forty (\$40.00) Dollars, and no more; and that since said 9th day of November, 1913, there has been due and owing from the said defendants, on account of said labor, the sum of Thirty-two '(\$32.50) Dollars and Fifty cents, besides interest at the legal rate from said last mentioned date.

#### VI.

That on the second day of December, 1913, the said H. H. Dech duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Recording Precinct, Alaska, in which precinct, said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owners of said mining claim and containing also the names of the persons who employed him as aforesaid; together with a statement of the terms of agreement between said H. H. Dech and said employer, and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit J I." to which reference is hereby made and which exhibit is hereby made a part of this complaint.

#### VII.

That the work and labor performed by the said H. H. Dech as aforesaid, was performed with a

knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim and the machinery and improvements situated thereon, shall be subject to the lien of the said H. H. Dech above metnioned.

VIII.

That the said H. H. Dech has paid the sum of Six Dollars and Seventy-five cents as a necessary charge and expense for preparing and recording said lien.

IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

X.

That prior to the commencement of said suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said H. H. Dech assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND TWENTIETH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

I.

That at all times herein mentioned the defendants, W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations un-

der the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

V.

That upon the 14th day of July, 1913, one Mrs. H. H. Dech and the defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves, and as agents for said Reliance Mining Company, owners of said Soo Quartz Mining Claim, entered into an agreement where the



said defendants, W. L. Spaulding and Raymond Brumbaugh, employed the said Mrs. H. H. Dech to work and labor as cook upon and in said Soo Quartz Mining Claim, for the price of Five Dollars per day, besides board and lodging; and that in pursuance of said agreement, said Mrs. H. H. Dech performed Eighty-one (81) days labor as cook in and upon said Soo Quartz Mining Claim, and as such cook assisted in the working, developing and improving of the said Soo Quartz Mining Claim, and the mine situated therein, between the 14th day of July, 1913, and the 8th day of October, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor, is of the value of Four Hundred and Five (\$405.00) Dollars: That no part of said sum of Four Hundred and Five Dollars has been paid; and since the said 8th day of October, 1913, there has been, and now is due from said defendants, the sum of Four Hundred and Five Dollars on account of said labor above described, besides interest at the legal rate from said last mentioned date.

## VI.

That on the 7th day of November, 1913, the said Mrs. H. H. Dech duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Precinct, Alaska, in which precinct said property is situated, her claim of lien duly verified by oath, which claim of lien contained a statement of her demand after deducting all just

credits and set-offs, with the name of the owner or reputed owner of said mining ground; and also the name of the person who employed the said Mrs. H. H. Dech as aforesaid, together with a statement of the terms of agreement between said Mrs. H. H. Dech and said employers and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit K", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

VII.

That the work and labor performed by the said Mrs. H. H. Dech as aforesaid was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim, and the machinery and improvements situated thereon, shall be subject to the lien of the said Mrs. H. H. Dech above mentioned.

VIII.

That the said Mrs. H. H. Dech has paid the sum of Eleven Dollars and Seventy-five cents as a necessary charge and expense for preparing and recording said lien; to-wit: Four Dollars and Twenty-five cents for recording thereof, and seven Dollars and fifty cents for preparing the same.

IX.

That the sum of Seventy-five Dollars is a reason-

able attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

X.

That prior to the commencement of this suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said Mrs. H. H. Dech assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND TWENTY-FIRST CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

I.

That at all times herein mentioned the defendants W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half



mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

V.

That on or about the 9th day of October, 1913, the said Mrs. H. H. Dech and the defendants, W. L. Spaulding and Raymond Brumbaugh, mining co-partners as aforesaid, for themselves and as agents for the said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh employed the said Mrs. H. H. Dech to work and labor as cook upon the said Soo Quartz Mining Claim for the price of Five Dollars per day besides board and lodging; and that in pursuance of said agreement the said Mrs. H. H. Dech performed Thirty-three and one-half ( $33\frac{1}{2}$ ) days labor as cook upon the said Soo Quartz Mining Claim and the mine situate therein, thereby assisting in the work of running tunnels and stopes, and in the working and developing and improving the said Soo Quartz Mining Claim and the mine therein located, between the 9th day of October, 1913, and the 14th day of No-

vember, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor above described, is of the value of One Hundred and Sixty-seven Dollars and Fifty cents (\$167.50): That no part of said sum of One Hundred and Sixty-seven Dollars and Fifty cents has been paid, save and except the sum of Fifty-seven Dollars and Eighty-five cents, and no more, and that since the said 14th day of November, 1913, there has been due and owing from the said defendants, on account of said labor, the sum of One Hundred Nine Dollars and Sixty-five cents (\$109.65), besides interest at the legal rate from said last mentioned date.

## VI.

That on the 2nd day of December, 1913, the said Mrs. H. H. Dech duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Recording Precinct, Alaska, in which precinct said property is situated, her claim of lien, duly verified by her oath, which claim of lien contained a statement of her demand after deducting all just credits and set-offs, with the name of the owner or reputed owners of said mining claim and containing also the names of the persons who employed her as aforesaid; together with a statement of the terms of agreement between said Mrs. H. H. Dech and said employer, and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and

marked "plaintiff's exhibit K I", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

#### VII.

That the said work and labor was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim and the machinery and improvements situated thereon, shall be subject to the lien of the said Mrs. H. H. Dech above mentioned.

#### VIII.

That the said Mrs. H. H. Deck has paid the sum of Six Dollars and Seventy-five cents as a necessary charge and expense for preparing and recording said lien.

#### IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

#### X.

That prior to the commencement of said suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said Mrs. H. H. Deck assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND TWENTY-SECOND CAUSE OF ACTION AGAINST THE DEFEND-



ANTS PLAINTIFF ALLEGES:

I.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned, said defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode Quartz claim known as the SOO MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

V.

That upon the 13th day of September, 1913, one

Hugh Ferry and the defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for said Reliance Mining Company, owners of said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed the said Hugh Ferry to work and labor upon and in said Soo Quartz Mining Claim, for the price of Five Dollars per day, besides board and lodging; and that in pursuance of said agreement, said Hugh Ferry performed Twenty-six (26) days labor in and upon said Soo Quartz Mining Claim, in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim and the mine situated therein, between the 13th day of September, 1913, and the 8th day of October, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor, above described, is of the value of One Hundred and Thirty (\$130.00) Dollars: That no part of said sum of One Hundred and Thirty Dollars has been paid; and since the said 8th day of October, 1913, there has been, and now is, from said defendants, the sum of One Hundred and Thirty Dollars due on account of said labor above described, besides interest at the legal rate from said last mentioned date.

## VI.

That on the 7th day of November, 1913, the said Hugh Ferry duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fair-

banks Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owner of said mining ground; and also the name of the person who employed the said Hugh Ferry as aforesaid, together with a statement of the terms of agreement between said Ferry and said employers and the condition of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit L", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

#### VII.

That the work and labor performed by the said Hugh Ferry as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim, and the machinery and improvements situated thereon, shall be subject to the lien of the said Hugh Ferry above mentioned.

#### VIII.

That the said Hugh Ferry has paid the sum of Eleven Dollars and Seventy-five cents as a necessary charge and expense for preparing and recording said lien, to-wit: Four Dollars and Twenty-five cents for recording thereof, and Seven Dollars and Fifty cents



for preparing the same.

IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

X.

That prior to the commencement of this suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said Hugh Ferry assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND TWENTY-THIRD CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

I.

That at all times herein mentioned the defendants, W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

II.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working

as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

V.

That on or about the 8th day of October, 1913, the said Hugh Ferry and the said defendants W. L. Spaulding and Raymond Brumbaugh, mining co-partners as aforesaid, for themselves and as agents for the said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants, W. L. Spaulding and Raymond Brumbaugh, employed the said Hugh Ferry to work and labor in and upon the said Soo Quartz Mining Claim for the price of Five Dollars per day besides board and lodging; and that in pursuance of said agreement the said Ferry performed Twenty-eight (28) days labor in and upon the said Soo Quartz Mining Claim and the mine situated therein in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim and the mine therein

located, between the 9th day of October, 1913, and the 9th day of November, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor, above described, is of the value of One Hundred Forty (\$140.00) Dollars: That no part of said sum of One Hundred Forty Dollars has been paid, save and except the sum of Fifty-six Dollars and Eighty-one cents, and no more; and that since the said 9th day of November, 1913, there has been due and owing from the said defendants, on account of said labor, the sum of Eighty-three Dollars and Nineteen cents, besides interest at the legal rate from said last mentioned date.

## VI.

That on the 2nd day of December, 1913, the said Hugh Ferry duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Recording Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owners of said mining claim and containing also the names of the persons who employed him as aforesaid; together with a statement of the terms of agreement between said Hugh Ferry and said employer, and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's ex-



hibit L 1", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

VII.

That the work and labor performed by said Hugh Ferry as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company that its interest in the said Soo Quartz Mining Claim and the machinery and improvements situated thereon, shall be subject to the lien of the said Hugh Ferry above mentioned.

VIII.

That the said Hugh Ferry has paid the sum of Six Dollars and Seventy-five cents as a necessary charge and expense for preparing and recording said lien.

IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

X.

That prior to the commencement of said suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said Hugh Ferry assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND TWENTY-FOURTH  
CAUSE OF ACTION AGAINST THE DEFEND-

## ANTS PLAINTIFF ALLEGES:

## I.

That at all times herein mentioned the defendants, W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

## II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

## III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska;

## IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

## V.

That upon the Third day of August, 1913, one

Louis Behl and the defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for said Reliance Mining Company, owners of said Soo Quartz Mining Claim, entered into an agreement wherein the said defendants W. L. Spaulding and Raymond Brumbaugh, employed the said Louis Behl to work and labor upon and in said Soo Quartz Mining Claim, for the price of Five Dollars per day, besides board and lodging; and that in pursuance of said agreement, said Louis Behl performed Seventy-three (73) days labor in and upon said Soo Quartz Mining Claim, in assisting in running tunnels and stopes, and in working, developing and improving the said Soo Quartz Mining Claim, and the mine situated therein, between the Third day of August, 1913, and the First day of November, 1913, both inclusive, at the rate of Five Dollars per day as aforesaid, which labor above described, is of the value of Three Hundred and Sixty-five (\$365.00) Dollars: That no part of said sum of Three Hundred and Sixty-five Dollars has been paid save and except the sum of Thirty-five Dollars and Twenty-five cents, and no part more; and since the said First day of November, there has been, and now is, from said defendant, the sum of Three Hundred and Twenty-nine Dollars and Seventy-five cents due on account of said labor above described, besides interest at the legal rate from said last mentioned date.



## VI.

That on the 28th day of November, 1913, Louis Behl duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owner of said mining ground; and also the name of the person who employed the said Behl as aforesaid, together with a statement of the terms of agreement between said Behl and said employers and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit M", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

## VII.

That the work and labor performed by the said Louis Behl as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim, and the machinery and improvements situated thereon, shall be subject to the lien of the said Louis Behl above mentioned.

VIII.

That the said Louis Behl has paid the sum of Eleven dollars and Seventy-five cents as a necessary charge and expense for preparing and recording said lien, to-wit: Four Dollars and Twenty-five cents for recording thereof, and seven dollars and fifty cents for preparing the same.

IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instiuting and prosecuting this cause of action in this suit in the above entitled Court.

X.

That prior to the commencement of this suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said Louis Behl assigned and transferred said account and lien to the plaintiff herein.

FOR A FURTHER AND TWENTY-FIFTH CAUSE OF ACTION AGAINST THE DEFENDANTS PLAINTIFF ALLEGES:

I.

That at all times herein mentioned the defendants, W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned, the defendant, the Reliance Mining Company, was a corporation

organized and existing under and by virtue of the laws of the State of Nevada;

### III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO QUARTZ MINING CLAIM, situate about one-half mile Northwest of Pedro Dome, on the right limit of Dome Creek, a tributary of the Chatanika river, and opposite creek placer mining claim Number 9, in the Fairbanks Recording Precinct, Alaska.

### IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

### V.

That upon or about the 12th day of July, 1913, one William Ahlmark and defendants, W. L. Spaulding and Raymond Brumbaugh, mining copartners as aforesaid, for themselves and as agents for the said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement wherein said defendants W. L. Spaulding and Raymond Brumbaugh employed said William Ahlmark as a teamster, to work and labor upon and about said Soo Quartz Mining Claim for the price of five dollars per day besides board and lodging; and in pursuance



of said agreement, the said William Ahlmark performed Seventy-six and one-half ( $76\frac{1}{2}$ ) days labor as such teamster in hauling and delivering wood for said mine and other work as teamster in and about the same, all of which was in aiding of the working, development and improvement of the said Soo Quartz Mining Claim and the mine situated thereon, and which work was performed between the 12th day of July, 1913 and the 8th day of October, 1913, both inclusive, which labor above described is of the value of Three Hundred Eighty-two Dollars and Fifty cents (\$382.50): That no part of said sum of Three Hundred Eighty-two Dollars and Fifty cents has been paid, and since the said 8th day of October, 1913, there has been and now is due from said defendants the sum of Three Hundred Eighty-two Dollars and Fifty cents, on account of said labor above described, besides interest at the legal rate from said last mentioned date: That upon the said 12th day of July, 1913, and as a part of the contract above set forth, the defendants W. L. Spaulding and Raymond Brumbaugh, hired from the said William Ahlmark one team of horses to work in hauling wood for said mine and perform other work in and around the same at the price of Five Dollars per day and board for said team: That under the terms of said contract said team of horses performed Sixty-seven and one-half ( $67\frac{1}{2}$ ) days work which work was in aiding of the working, development and improvement of said Soo Quartz Mining Claim, and was performed be-

tween the 12th day of July, 1913, and the 8th day of October, 1913; that the rental value of said team of horses for the said 67½ days work was the sum of Three Hundred Thirty-seven (\$337.00) Dollars: That no part of the said sum of Three Hundred Thirty-seven Dollars has been paid, save and except the sum of One Hundred Twelve (\$112.00) Dollars, and since the 8th day of October, there has been, and now is from the said defendants the sum of Two Hundred Twenty-five Dollars due on account of the said team hire above described, besides interest at the legal rate from the said last mentioned date.

## VI.

That on the 7th day of November, 1913, the said William Ahlmark duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits and set-offs, with the name of the owner or reputed owner of said mining ground, and also the name of the person who employed the said William Ahlmark as aforesaid, together with a statement of the terms of agreement between said William Ahlmark and said employers and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked "plaintiff's exhibit N", to which reference is hereby made and

which exhibit is hereby made a part of this complaint.

VII.

That the work and labor performed by the said William Ahlmark as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation, and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim, and the machinery and improvements situated thereon, shall be subject to the lien of the said William Ahlmark above mentioned.

VIII.

That the said William Ahlmark has paid the sum of Eleven Dollars and seventy-five cents as a necessary charge and expense for preparing and recording said lien, to-wit: Four Dollars and Twenty-five cents for recording thereof, and Seven Dollars and Fifty cents for preparing the same.

IX.

That the sum of Seventy-five Dollars is a reasonable attorney's fee for instituting and prosecuting this cause of action in this suit in the above entitled Court.

X.

That prior to the commencement of this suit, to-wit: on or about the Fourth day of December, 1913, for a valuable consideration, the said William Ahlmark assigned and transferred said account and lien to the plaintiff herein.



FOR A FURTHER AND TWENTY-SIXTH  
CAUSE OF ACTION AGAINST THE DEFEND-  
ANTS PLAINTIFF ALLEGES:

I.

That at all times herein mentioned said defendants, W. L. Spaulding and Raymond Brumbaugh were mining copartners conducting mining operations under the firm name and style of the SOO MINING COMPANY;

II.

That at all times herein mentioned, said defendants, the Reliance Mining Company, was a corporation organized and existing under and by virtue of the laws of the State of Nevada;

III.

That at all times herein mentioned, said defendants, W. L. Spaulding and Raymond Brumbaugh, were prospecting, developing, improving and working as lessees or reputed lessees, upon and in that certain lode quartz claim known as the SOO MINING CLAIM, situated about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, a tributary of the Chatanika river, and opposite creek placer mining claim number 9, in the Fairbanks Recording Precinct, Alaska;

IV.

That at all times herein mentioned, the defendant, the Reliance Mining Company, a corporation, was, and now is, the owner and reputed owners of said Soo Quartz Mining Claim above described.

## V.

That upon or about the 9th day of October, 1913, one William Ahlmark and the defendants, W. L. Spaulding and Raymond Brumbaugh, mining co-partners as aforesaid, for themselves and as agents for the said Reliance Mining Company, owners of the said Soo Quartz Mining Claim, entered into an agreement wherein said defendants, W. L. Spaulding and Raymond Brumbaugh employed said William Ahlmark as a teamster, to work and labor upon and about said Soo Quartz Mining Claim for the price of five dollars per day besides board and lodging; and in pursuance of said agreement, the said William Ahlmark performed twenty-five days labor as such teamster in hauling and delivering wood for said mine and other work as teamster in and about the same, all of which was in aiding of the working, development and improvement of the said Soo Quartz Mining Claim and the mine situated thereon, and which work was performed between the 9th day of October, 1913, and the 9th day of November, 1913, inclusive, which labor above described is of the value of One Hundred Twenty-five (\$125.00) Dollars: That no part of said sum of One Hundred Twenty-five Dollars has been paid and since the said 9th day of November, 1913, there has been and now is due from said defendants the sum of One Hundred Twenty-five Dollars on account of said labor above described besides interest at the legal rate from said last mentioned date. That upon the said 9th day of October, 1913, and as

part of the contract above set forth, the defendants, W. L. Spaulding and Raymond Brumbaugh, hired from the said William Ahlmark one team of horses to work in hauling wood for said mine and perform other work in and around the same at price of Five Dollars per day and board for said team: That under the terms of said agreement said team of horses performed Twenty-six (26) days work which work was in aiding of the working, development and improvement of said Soo Quartz Mining Claim, and was performed between the 9th day of October, 1913 and the 9th day of November, 1913; that the rental value of said team of horses for said time was the sum of One Hundred Thirty (130.) Dollars: That no part of said sum of One Hundred Thirty Dollars has been paid save and except the sum of One Hundred Fifteen (\$115.00) Dollars, and since the 9th day of November, 1913, there has been, and now is, from the said defendants the sum of Fifteen (15) Dollars due on account of the said team hire above described, besides interest at the legal rate from the said last mentioned date.

## VI.

That on the 2nd day of December, 1913, the said William Ahlmark duly filed and recorded in the office of the commissioner and ex-officio recorder for the Fairbanks Precinct, Alaska, in which precinct said property is situated, his claim of lien, duly verified by his oath, which claim of lien contained a statement of his demand after deducting all just credits



and set-offs, with the name of the owner or reputed owner of said mining ground, and also the name of the person who employed the said William Ahlmark as aforesaid, together with a statement of the terms of agreement between said William Ahlmark and said employers and the conditions of said contract; and also a description of the property sought to be charged with a labor lien in the premises, a copy of which lien is hereto attached and marked plaintiff's exhibit N 1", to which reference is hereby made and which exhibit is hereby made a part of this complaint.

#### VII.

That the work and labor performed by the said William Ahlmark as aforesaid, was performed with a knowledge and consent of the said Reliance Mining Company, a corporation and its officers, and the said Reliance Mining Company consented that its interest in the said Soo Quartz Mining Claim, and the machinery and improvements situated thereon, shall be subject to the lien of the said William Ahlmark above mentioned.

#### VIII.

That the said William Ahlmark has paid the sum of six dollars and seventy-five cents as a necessary charge and expense for preparing and recording said lien.

#### IX.

That the sum of seventy-five dollars is a reasonable attorney's fee for instituting and prosecuting

this cause of action in this suit in the above entitled Court.

X.

That prior to the commencement of said suit, to-wit: on or about the fourth day of December, 1913, for a valuable consideration, the said William Ahlmark assigned and transferred said account and lien to the plaintiff herein.

Wherefore:

Plaintiff prays for judgment against defendants.

I.

For the sum of five thousand one hundred sixty-four and 83-100 '(\$5,164.83) dollars on said labor accounts; for the sum of two hundred fifty-two and 25-100 (\$252.25) dollars for expense for preparing and filing said liens, and for attorney's fees in the sum of two thousand twenty-five (\$2,025.00) Dollars; all aggregating the sum of seven thousand four hundred forty-two and .08-100 (\$7,442.08) dollars, together with interest thereon until paid.

II.

That said aggregate sum of \$7,442.08, be by this Court adjudged to be a lien against the mining claim herein above described.

III.

That said mining ground above described, together with the buildings, improvements and machinery thereon, and described in said liens, be adjudged and decreed by this Court, to be sold, according to law, and the practice of this Court, as real estate is sold

under execution in Alaska, and that the proceeds of such sale be applied to the payment of the costs of these proceedings, and a reasonable attorney's fee to be allowed by this Court, to-wit: the sum of \$2,025.00, and the plaintiff's demand herein as aforesaid.

IV.

That plaintiff be allowed his costs and disbursements herein expended, and that the same may be made a lien upon the premises herein described.

V.

That the plaintiff or other parties to this suit, may become a purchaser at any sale, under any decree entered herein.

VI.

That the plaintiff may have such other and general relief in the premises as this Court may deem just and equitable.

T. A. MARQUAM,  
Attorney for Plaintiff.

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“EXHIBIT A”  
CLAIM OF LIEN

KNOW ALL MEN BY THESE PRESENTS: That S. A. Martin of the Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, has, by virtue of an oral contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, both of the same place, who are conducting mining operations on the Soo Quartz Mining Claim hereinafter described, and who are reputed to be copartners con-



ducting the said operations under the name of the SOO MINING COMPANY, performed labor as a miner in running tunnels and stopes and in the working and development of that certain quartz mining claim known as the Soo Quartz Mining Claim, and the mine thereon and therein situated, which mining claim is hereinafter more particularly described;

That the contract and reasonable price of such labor so performed was the sum of five dollars per day, and board, and the said W. L. Spaulding and Raymond Brumbaugh agreed to pay claimant herein five dollars per day and board for such labor;

That between July 28 1913 and the 8th day of October, 1913, inclusive, under the terms of said contract, said S. A. Martin performed  $73\frac{1}{2}$  days labor in and upon said mining claim in the working and development thereof as aforeseaid;

That for the work so performed, claimant received his board during the time he so worked, but nothing more; and that the sum of Three hundred and sixty-two and 50-100 (\$362.50) dollars is now due for said labor so performed after deducting all just credits and offsets;

That S. A. Martin claims, and it is his intention to hold, a lien for the amount so due, upon the said Soo Quartz Mining Claim, the mine and lode thereon, and therein situated, together with the improvements and machinery situated thereon or connected therewith, also the leasehold interest of W. L. Spaulding in and to the Soo Mining Claim above described

which lease is recorded at page 498 Vol. 5, of Leases in the office of the recorder for the Fairbanks Precinct, Fourth Division, Alaska, to which reference is made for a more complete description of said leasehold interest.

That the Soo Quartz Mining Claim is described as follows, to-wit: Commencing at the point of discovery on said claim; thence running in a southerly direction 300 feet to a post marked Southeast corner; thence in a westerly direction 1,500 feet to a post marked Southwest Corner; thence in a northerly direction 300 feet to a post marked Center End; thence in a northerly direction 300 feet to a post marked Northwest Corner; thence in an easterly direction 1500 feet to a post marked Northeast Corner; thence in a southerly direction 300 feet to the place of beginning. Said claim being 1500 feet in length by 600 feet in width, and is situated about one-half mile northwest of Pedro Dome on the right limit of Dome creek opposite creek claim Number 9, and is bounded on the east by the Waterbury Quartz Mining Claim, all situate in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska; and that the location certificate of said Soo Quartz Mining Claim is recorded at page 73 Volume 12 of locations in the office of the Recorder of the Fairbanks Precinct, Alaska, to which reference is hereby made.

That the improvements and machinery upon which claimant also claims a lien, is a certain boiler house

with boiler, hoist, five horse power engine and three stamp mill situated at the mouth of the shaft of the mine upon said Soo Quartz Mining Claim; also a certain two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situated at the head of Dome creek opposite the Soo Quartz Mining Claim and about one-quarter of a mile distant therefrom, together with the building in which said stamp mill is situated.

That the Reliance Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, of which Raymond Brumbaugh is president, L. B. Clough vice president and R. C. Erchinger secretary, are the owners or reputed (owners of the said Soo Quartz Mining Claim and three stamp mill situated thereon, and the labor performed by claimant herein and above mentioned was performed with a knowledge of the said Reliance Mining Company, a corporation, and the officers thereof.

And the said W. L. Spaulding is the owner or reputed owner of all the machinery, stamp mill and equipment, and the building enclosing the same, above described, except the said three stamp mill.

That the said W. L. Spaulding and Raymond Brumbaugh, reputed to be copartners in the mining of said property, and by whom the said claimant herein was employed, are the lessees or **reputed** lessees of said mining property.

That thirty days has not elapsed since the last item



of labor above mentioned was performed.

S. A. MARTIN,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

S. A. Martin, being first duly sworn, on oath, says:  
That he is the lien claimant mentioned in the foregoing claim of lien, knows the contents thereof, and that the same is true; and that said claim of lien contains, among other things, a correct statement of the claimant's demand after deducting all just credits and set-offs.

S. A. MARTIN.

Subscribed and sworn to before me this 7th day of  
November, A. D. 1913.

(SEAL)

T. A. MARQUAM,  
A Notary Public for District of Alaska.  
My commission will expire July 6, 1914.

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“EXHIBIT A 1”  
CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That  
S. A. MARTIN of Fairbanks, Alaska, has, by virtue  
of a contract heretofore made with W. L. Spaulding  
and Raymond Brumbaugh, mining copartners, per-  
formed work and labor as hereinafter set forth as a  
miner and mine foreman in running tunnels and  
stopes and in the working and developing of the Soo  
Quartz Mining claim and the mine situate thereon;  
and said mining claim and mine together with the

improvements thereon being at the time the property of the Reliance Mining Company, a corporation organized and existing under the laws of Nevada, and doing business in Alaska;

Said Soo Quartz Mining Claim is situated about one-half mile Northwest of Pedro Dome on the right limit of Dome creek, opposite creek placer mining claim Number 9; said claim being 1500 feet long and 600 feet wide, the location certificate of which is recorded at page 73, Vol. 12 of Location in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Territory of Alaska, to which reference is hereby made for a complete description of said claim.

That between the 9th day of October, 1913, inclusive and the 10th day of November, 1913, claimant performed as aforesaid 31 days labor, 15½ days as a miner at \$5.00 per day and 15½ days as foreman at \$8.00 per day.

That the contract and reasonable price of wages for said work and labor so performed was five dollars per day for work as a miner and \$8.00 per day as foreman besides board.

That for said work there was due claimant in wages \$201.50 dollars, on account thereof claimant received \$72.45 and no more; That there are no other credits or set-offs against the same, and there is now due claimant the sum of \$128.05.

That said W. L. Spaulding was at the time mentioned herein the owner or reputed owner of a ten year leasehold interest in the said Soo Quartz Mining

Claim beginning June 9th, 1913, which is recorded, November, 5th, 1913, at page 498, Vol. 5 of Leases of the aforesaid records; and he is also the owner, or reputed owner, of a two stamp mill and equipment formerly known as the Sutherland Stamp mill, situate opposite to, and about one-quarter mile distant from Soo Quartz Mining Claim together with buildings inclosing the same.

That claimant herein claims a lien for the amounts due as aforesaid upon the said Soo Quartz Mining Claim and the mining machinery, buildings, stamp mill and improvements therein and thereon situated, all of which the Reliance Mining Company are the owners or reputed owners. He also claims a lien therefore, upon the leasehold interest in said Soo Quartz Mining Claim, owned by the said W. L. Spaulding as aforesaid; also two stamp mill of the said W. L. Spaulding above described and its equipment and buildings inclosing the same.

That the labor performed by claimant was performed and done with the knowledge of the said Reliance Mining Company and its officers.

That since last item of labor above mentioned was performed thirty days has not yet elapsed.

S. A. MARTIN,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

S. A. Martin, being first duly sworn, on oath, says:  
That he is the lien claimant herein; that he has read



the foregoing claim of lien, knows the contents thereof, and that the same is true: That said claim of lien contains a correct statement of claimant's demand after deducting all just credits and set-offs.

S. A. MARTIN,

Subscribed and sworn to before me this 15th day of November, 1913.

(SEAL)

T. A. MARQUAM,

Notary Public in and for Alaska.

My commission expires July 6, 1914.

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“EXHIBIT B”

CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That John Curry, of the Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, has, by virtue of an oral contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, both of the same place, who are conducting mining operations under the name of the SOO MINING COMPANY, performed labor as engineer and mill-man in the mining, working and development of that certain Quartz mining claim known as the Soo Quartz Mining Claim, and the mine thereon, and therein situated, which mining claim is hereinafter more particularly described;

That the contract and reasonable price of such labor so performed was the sum of five dollars per day, and board, and the said W. L. Spaulding and Raymond Brumbaugh agreed to pay claimant herein

five dollars per day and board for such labor;

That between September 1st, 1913, and the 8th day of October, 1913, inclusive, under the terms of said contract, said John Curry performed Thirty-eight (38) days labor in and upon said mining calims in the working and development thereof as aforesaid;

That for the work so performed, claimant received his board during the time he so worked, but nothing more; and that the sum of One hundred and ninety (\$190.00) dollars is now due for said labor so performed, after deducting all just credits and set-offs;

That John Curry claims, and it is his intention to hold, a lien for the amount so due, upon the said Soo Quartz Mining Claim, the mine and lode thereon and therein situated, together with the improvements and machinery situated thereon; also the leasehold interest of W. L. Spaulding in and to the Soo Mining Claim above described, which lease is recorded at page 498, Vol. 5 of Lases, in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Alaska, to which reference is made for a more complete description of said leasehold interest.

That the Soo Quartz Mining Claim is described as follows, to-wit: Commencing at the point of discovery on said claim; thence running in a southerly direction 300 feet to a post marked southesast corner; thence in a westerly direction 1500 feet to a post marked Southwest corner; thence in a northerly direction 300 feet to a post marked Center End;

thence in a northerly direction 300 feet to a post marked Northwest Corner; thence in an easterly direction 1500 feet to a post marked Northeast Corner; thence in a southerly direction 300 feet to the place of beginning. Said claim being 1500 feet in length by 600 feet in width, and is situated about one-half mile northwest of Pedro Dome on the right limit of Dome Creek opposite creek claim Number 9, and is bounded on the east by the Waterbury Quartz Mining Claim; all situate in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska; that the location certificate of said Soo Quartz Mining Claim is recorded at page 73, Volume 12 of Locations in the office of the Recorder of the Fairbanks Precinct, Alaska, to which reference is hereby made.

That the improvements and machinery upon which claimant also claims a lien, is a certain boiler house, with boiler, hoist, five horsepower engine and three stamp mill situated at the mouth of the shaft of the mine upon said Soo Quartz Mining Claim; also a certain two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate at the head of Dome creek opposite the Soo Quartz Mining Claim and about one-quarter of a mile distant therefrom, together with the building in which said stamp mill is situated.

That the Reliance Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, of which Raymond



Brumbaugh is president, L. B. Clough vice president and R. C. Erchinger secretary, are the owners or reputed owners of the said Soo Quartz Mining Claim, and the three stamp mill situate thereon; and the labor performed by claimant herein and above mentioned was performed with a knowledge of the said Reliance Mining Company, a corporation, and the officers thereof.

And the said W. L. Spaulding is the owner or reputed owner of all the machinery, stamp mill and equipment, and the building enclosing the same, above described, except the said three stamp mill.

That the said W. L. Spaulding and Raymond Brumbaugh, reputed to be copartners in the mining of said property, and by whom the said claimant herein was employed, are the lessess or reputed lessees of said mining property.

That thirty days has not elapsed since the last item of labor above mentioned was performed.

JOHN CURRY,

Lien Claimant.

United States of America,

Territory of Alaska,—ss:

John Curry, being first duly sworn, on oath, says: That he is the lien claimant mentioned in the foregoing claim of lien; that he has read said claim of lien, knows the contents thereof, and that the same is true; and that said claim of lien contains, among other things, a correct statement of the claimant's

demand, after deducting all just credits and set-offs.

JOHN CURRY,

Lien Claimant.

Subscribed and sworn to before me this 7th day  
of November, A. D. 1913.

(Seal)

T. A. MARQUAM,

A Notary Public for District of Alaska.

My commission will expire July 6, 1913.

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“EXHIBIT B 1”

CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That JOHN CURRY of Fairbanks, Alaska, has, by virtue of a contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, mining copartners, performed work and labor as hereinafter set forth as a miner in running tunnels and stopes and in the working and development of the Soo Quartz Mining Claim and the mine situate thereon; and said mining claim and mine together with the improvements thereon being at the time the property of the Reliance Mining Company, a corporation, organized and existing under the laws of Nevada, and doing business in Alaska;

Said Soo Quartz Mining Claim is situated about one-half mile Northwest of Pedro Dome on the right limit of Dome Creek, opposite creek placer mining claim Number 9; said claim being 1500 feet long and 600 feet wide, the location certificate of which is recorded at page 73, Vol. 12 of Locations in the

office of the Recorder for the Fairbanks Precinct, Fourth Division, Territory of Alaska, to which reference is hereby made for a complete description of said claim.

That between the 9th day of October, 1913, inclusive, and the 9th day of November, 1913, claimant performed as aforesaid 36½ days labor.

That the contract and reasonable price of wages for said work and labor so performed was five dollars per day, besides board.

That for said work there was due claimant in wages \$182.50 dollars, on account thereof claimant received \$57.40 and no more; That there are no other credits or set-offs against the same, and there is now due claimant the sum of \$125.10.

That said W. L. Spaulding was at the time mentioned herein the owner or reputed owner of a ten year lease hold interest in the said Soo Quartz Mining Claim beginning June 9th, 1913, which is recorded November 5th, 1913, at page 498, Vol. 5 of Leases of the aforesaid records; and he is also the owner, or reputed owner, of a two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate opposite to, and about one-quarter mile distant from Soo Quartz Mining Claim together with buildings inclosing same.

That claimant herein claims a lien for the amounts due as aforesaid upon the said Soo Quartz Mining Claim and the mining machinery, buildings, stamp mill and improvements therein and thereon situated,



all of which the Reliance Mining Company are the owners or reputed owners. He also claims a lien therefore, upon the lease hold interest in said Soo Quartz Mining Claim, owned by the said W. L. Spaulding as aforesaid; also two stamp mill of the said W. L. Spaulding above described and its equipment and buildings inclosing the same.

That the labor performed by claimant was performed and done with the knowledge of the said Reliance Mining Company and its officers.

That since last item of labor above mentioned was performed thirty days has not yet elapsed.

JOHN CURRY,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

John Curry, being first duly sworn, on oath, says: That he is the lien claimant herein; that he has read the foregoing claim of lien, knows the contents thereof, and that the same is true; That said claim of lien contains a correct statement of claimant's demand after deducting all just credits and set-offs.

JOHN CURRY,

Subscribed and sworn to before me this 17th day of Nov. 1913.

(SEAL)

T. A. MARQUAM,  
Notary Public in and for Alaska.  
My commission will expire July 6, 1914.

“EXHIBIT C”  
CLAIM OF LIEN

KNOW ALL MEN BY THESE PRESENTS: That John Nyland, of the Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, has, by virtue of an oral contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, both of the same place, who are conducting mining operations on the Soo Quartz Mining Claim hereinafter described, and who are reputed to be copartners conducting the said operations under the name of the SOO MINING COMPANY, performed labor as a miner in running tunnels and stopes and in the working and development of that certain quartz mining claim known as the Soo Quartz Mining Claim, and the mine thereon and therein situated, which mining claim is hereinafter more particularly described;

That the contract and reasonable price of such labors so performed was the sum of five dollars per day, and board, and the said W. L. Spaulding and Raymond Brumbaugh agreed to pay claimant herein five dollars per day and board for such labor;

That between August 29, 1913, and the 8th day of October, 1913, inclusive, under the terms of said contract, said John Nyland performed forty-one (41) days labor in and upon said mining claim in the working and development thereof as aforesaid;

That for the work so performed, claimant received his board during the time he so worked, but nothing more; and that the sum of Two hundred and five

(\$205.00) dollars is now due for said labor so performed, after deducting all just credits and offsets;

That John Nyland claims, and it is his intention to hold, a lien for the amount so due, upon the said Soo Quartz Mining Claim, the mine and lode thereon, and therein situated, together with the improvements and machinery situated thereon or connected therewith, and hereinafter described; also the leasehold interest of W. L. Spaulding in and to the Soo Mining Claim above described which lease is recorded at page 498 Vol. 5 of Leases in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Alaska, to which reference is made for a more complete description of said leasehold interest.

That the Soo Quartz Mining Claim is described as follows, to-wit: Commencing at the point of discovery on said claim; thence running in a southerly direction 300 feet to a post marked Southeast corner; thence in a westerly direction 1500 feet to a post marked Southwest corner; thence in a northerly direction 300 feet to a post marked Center End; thence in a northerly direction 300 feet to a post marked Northwest Corner; thence in an easterly direction 1500 feet to a post marked northeast Corner; thence in a southerly direction 300 feet to the place of beginning. Said claim being 1500 feet in length by 600 feet in width, and is situated about one-half mile northwest of Pedro Dome on the right limit of Dome Creek opposite creek claim Number 9, and is bounded on the east by the Waterbury Quartz Min-



ing Claim; all situate in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska; That the location certificate of said Soo Quartz Mining Claim is recorded at page 73, Vol. 12 of Locations in the office of the Recorder of the Fairbanks Precinct, Alaska, to which reference is hereby made.

That the improvements and machinery upon which claimant also claims a lien is a certain boiler house, with boiler and hoist and five horse power engine and three stamp mill situated at the mouth of the shaft of the mine upon said Soo Quartz Mining Claim; also a certain two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate at the head of Dome creek opposite the Soo Quartz Mining Claim and about one-quarter of a mile distant therefrom, together with the building in which said stamp mill is situated.

That the Reliance Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, of which Raymond Brumbaugh is president, L. B. Clough vice president and R. C. Erchinger secretary, are the owners or reputed owners of the said Soo Quartz Mining Claim and the three stamp mill situate thereon, and the labor performed by claimant herein and above mentioned was performed with a knowledge of the said Reliance Mining Company, a corporation, and the officers thereof.

And the said W. L. Spaulding is the owner or re-

puted owner of all the machinery, stamp mill and equipment, and the building enclosing the same, above described except the said three stamp mill.

That the said W. L. Spaulding and Raymond Brumbaugh, reputed to be copartners in the mining of said property, and by whom the said claimant herein was employed, are the lessees or reputed lessees of said mining property.

That thirty days has not elapsed since the last item of labor about mentioned was performed.

JOHN NYLAND,

Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

John Nyland, being first duly sworn, on oath, says: That he is the lien claimant mentioned in the foregoing claim lien; that he has read said claim of lien, knows the contents thereof, and that the same is true; and that said claim of lien contains, among other things, a correct statement of the claimant's demand, after deducting all just credits and set-offs.

JOHN NYLAND.

Subscribed and sworn to before me this 7th day of November, A. D. 1913.

(SEAL)

T. A. MARQUAM,

A Notary Public for District of Alaska.

My commission will expire July 6, 1914.

EXHIBIT C 1."  
CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS:  
That John Nyland of Fairbanks, Alaska, has by virtue of a contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, mining copartners, performed work and labor as hereinafter set forth as a miner in running tunnels and stopes and in the working and development of the Soo Quartz Mining Claim and the mine situated thereon and therein; and said mining claim and mine together with the improvements thereon being at the time the property of the Reliance Mining Company, a corporation organized and existing under the laws of Nevada, and doing business in Alaska;

Said Soo Quartz Mining Claim is situated about one-half mile Northwest of Pedro Dome on the right limit of Dome creek, opposite creek placer mining claim Number 9; said claim being 1500 feet long and 600 feet wide, the location certificate of which is recorded at page 73, Vol. 12 of Locations in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Territory of Alaska, to which reference is hereby made for a complete description of said claim.

That between the 9th day of October, 1913, inclusive, and the 9th day of November, 1913, claimant performed as aforesaid  $28\frac{1}{2}$  days labor.

That the contract and reasonable price of wages for said work and labor so performed was five dollars



per day, besides board.

That for said work there was due claimant in wages \$142.50 dollars, on account thereof claimant received \$56.81 and no more; That there are no other credits or set-offs against the same, and there is now due claimant the sum of \$85.69.

That said W. L. Spaulding was at the time mentioned herein the owner or reputed owner of a ten year lease hold interest in the said Soo Quartz Mining Claim beginning June 9th, 1913, which is recorded November, 5th, 1913, at page 498, Vol. 5 of leases of the aforesaid records, to which reference is made for a complete description thereof, and he is also the owner, or reputed owner, of a two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate opposite to, and about one-quarter mile distant from Soo Quartz Mining Claim together with buildings inclosing same.

That claimant herein claims a lien for the amounts due as aforesaid upon the said Soo Quartz Mining Claim and the mining machinery, buildings, stamp mill and improvements therein and thereon situated, of all of which the Reliance Mining Company are the owners or reputed owners. He also claims a lien therefore upon the lease hold interest in said Soo Quartz Mining Claim, owned by the said W. L. Spaulding as aforesaid; also two stamp mill of the said W. L. Spaulding above described and its equipment and buildings inclosing the same.

That the labor performed by claimant was per-

formed and done with the knowledge of the said Reliance Mining Company and its officers.

That since last item of labor above mentioned was performed thirty days has not yet elapsed.

JOHN NYLAND,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss.

John Nyland, being first duly sworn on oath says: That he is the lien claimant herein; that he has read the foregoing claim of lien, knows the contents thereof, and that the same is true: That said claim of lien contains a correct statement of claimant's demand, after deducting all just credits and set-offs.

JOHN NYLAND.

Subscribed and sworn to before me this 17 day of November, 1913.

!(SEAL)

T. A. MARQUAM.

Notary public for Alaska.

Commission expires July 6, 1914.

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“EXHIBIT D”

CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That Walford Peterson of the Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, has, by virtue of an oral contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, both of the same place, who are conducting mining operations under the name of the SOO MINING COM-

PANY, performed labor as a miner in running tunnels and stopes and in the working and development of that certain Quartz mining claim known as the Soo Quartz Mining Claim, and the mine thereon, and therein situated, which mining claim is hereinafter more particularly described;

That the contract and reasonable price of such labor so performed was the sum of five dollars per day, and board, and the said W. L. Spaulding and Raymond Brumbaugh agreed to pay claimant herein five dollars per day and board for such labor;

That between July 22, 1913, and the 8th day of October, 1913, inclusive, under the terms of said contract, said Walford Peterson performed 74 days labor in and upon said mining claim in the working and development thereof as aforesaid;

That for the work so performed, claimant received his board during the time he so worked, but nothing more, except the sum of \$50.00; and that the sum of Three hundred and twenty (\$320.00) dollars is now due for said labor so performed, after deducting all just credits and offsets;

That Walford Peterson claims, and it is his intention to hold, a lien for the amount so due, upon the said Soo Quartz Mining Claim, the mine and lode thereon and therein situated, together with the improvements and machinery situated thereon; also the lease hold interest of W. L. Spaulding in and to the Soo Mining Claim above described, which lease is recorded at page 498, Vol. 5 of Leases in the office



of the Recorder for the Fairbanks Precinct, Fourth Division, Alaska, to which reference is made for a more complete description of said lease hold interest.

That the Soo Quartz Mining Claim is described as follows, to-wit: Commencing at the point of discovery on said claim; thence running in a southerly direction 300 feet to a post marked Southeast Corner; thence in a westerly direction 1500 feet to a post marked Southwest Corner; thence in a northerly direction 300 feet to a post marked Center End; thence in a northerly direction 300 feet to a post marked Northwest Corner; thence in an easterly direction 1500 feet to a post marked Northeast Corner; thence in a southerly direction 300 feet to the place of beginning. Said claim being 1500 feet in length by 600 feet in width, and is situated about one-half mile northwest of Pedro Dome on the right limit of Dome creek opposite creek claim Number 9, and is bounded on the east by the Waterbury Quartz Mining Claim; all situate in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska; that the location certificate of said Soo Quartz Mining Claim is recorded at page 73, Volume 12 of Locations in the office of the Recorder of the Fairbanks Precinct, Alaska, to which reference is hereby made.

That the improvements and machinery upon which claimant also claims a lien, is a certain boiler house, with boiler, hoist, five horse power engine and three stamp mill situated at the mouth of the shaft of the

mine upon said Soo Quartz Mining Claim; also a certain two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate at the head of Dome creek opposite the Soo Quartz Mining Claim and about one-quarter of a mile distant therefrom, together with the building in which said stamp mill is situated.

That the Reliance Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, of which Raymond Brumbaugh is president, L. B. Clough, vice-president and R. C. Erchinger secretary, are the owners or reputed owners of the said Soo Quartz Mining Claim, and the three stamp mill situate thereon; and the labor so performed by claimant herein and above mentioned was performed with a knowledge of the said Reliance Mining Company, a corporation, and the officers thereof.

And the said W. L. Spaulding is the owner or reputed owner of all the machinery, stamp mill and equipment, and the building enclosing the same, above described, except the said three stamp mill.

That the said W. L. Spaulding and Raymond Brumbaugh, reputed to be copartners in the mining of said property, and by whom the said claimant herein was employed, are the lessees or reputed lessees of said mining property.

That thirty days has not elapsed since the last item

of labor above mentioned was performed.

S. A. MARTIN, Agt.  
WALFORD PETERSON,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

S. A. Martin, being first duly sworn, on oath, says:  
That he is the agent of the lien claimant above mentioned; that he has read said claim of lien, knows the contents thereof, has knowledge of the facts therein stated, and that the statements contained in said claim of lien are true, and that said claim of lien contains, among other things, a correct statement of the claimant's demand, after deducting all just credits and set-offs.

S. A. MARTIN.

Subscribed and sworn to before me this 7th day of  
November, A. D. 1913.

(SEAL)

T. A. MARQUAM,  
A Notary Public for District of Alaska.  
My commission will expire July 6, 1914.

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“EXHIBIT D 1”

CLAM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS:  
That Walfred Peterson of Fairbanks, Alaska, has by virtue of a contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, mining co-partners, performed work and labor as hereinafter set forth as a miner in running tunnels and stopes and



in the working and development of the Soo Quartz Mining Claim and the mine situate thereon and therein; and said mining claim and mine together with the improvements thereon being at the time the property of the Reliance Mining Company, a corporation organized and existing under the laws of Nevada, and doing business in Alaska;

Said Soo Quartz Mining Claim is situated about one-half mile northwest of Pedro Dome on the right limit of Dome creek, opposite creek placer mining claim Number 9; said claim being 1500 feet long and 600 feet wide, the location certificate of which is recorded at page 73, Vol. 12 of Locations in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Territory of Alaska, to which reference is hereby made for a complete description of said claim.

That between the 9th day of October, 1913, inclusive and the 9th day of November, 1913, claimant performed as aforesaid 25 days labor.

That the contract and reasonable price of wages for said work and labor so performed was five dollars per day, besides board.

That for said work there was due claimant in wages \$125.00 dollars, on account thereof claimant received \$57.20 and no more; That there are no other credits or set-offs against the same, and there is now due claimant the sum of \$67.80.

That said W. L. Spaulding was at the time mentioned herein the owner or reputed owner of a ten year lease hold interest in the said Soo Quartz Min-

ing Claim, beginning June 9, 1913, which is recorded November, 5th, 1913, at page 498, Vol. 5 of Leases of the aforesaid records, to which reference is made for a complete description thereof, and he is also the owner, or reputed owner, of a two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate opposite to, and about one-quarter mile distant from Soo Quartz Mining Claim together with buildings inclosing same.

That claimant herein claims a lien for the amounts due as aforesaid upon the said Soo Quartz Mining Claim and the mining machinery, buildings, stamp mill and improvements therein and thereon situated, of all of which the Reliance Mining Company are the owners or reputed owners. He also claims a lien therefore upon the leasehold interest in said Soo Quartz Mining Claim, owned by the said W. L. Spaulding as aforesaid; also two stamp mill of the said W. L. Spaulding above described and its equipment and buildings inclosing the same.

That the labor performed by claimant was performed and done with the knowledge of the said Reliance Mining Company and its officers.

That since last item of labor above mentioned was performed thirty days has not yet elapsed.

**WALFRED PETERSON,**

Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

Walfred Peterson, being first duly sworn on oath

says: That he is the lien claimant herein; that he has read the foregoing claim of lien, knows the contents thereof, and that the same is true: That said claim of lien contains a correct statement of claimant's demand, after deducting all just credits and set-offs.

WALFRED PETERSON.

Subscribed and sworn to before me this 18th day of November, 1913.

(SEAL)

T. A. MARQUAM,

Notary Public for Alaska.

Commission expires July 6, 1914.

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“EXHIBIT E”

CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That Al Myers, of Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, has, by virtue of an oral contract heretofore made with W. L. Spalding and Raymond Brumbaugh, both of the same place, who are conducting mining operations on the Soo Quartz Mining claim, hereinafter described, and who are reputed to be copartners conducting the said operations under the name of the SOO MINING Company, performed labor as a miner in running tunnels and stopes and in the working and development of that certain quartz mining claim known as the Soo Quartz Mining Claim, and the mine thereon and therein situated, which mining claim is hereinafter more particualrly described;

That the contract and reasonable price of such



labor so performed was the sum of five dollars per day, and board, and the said W. L. Spaulding and Raymond Brumbough agreed to pay claimant herein five dollars per day and board for such labor;

That between July 2, 1913, and the 8th day of October, 1913, inclusive, under the terms of said contract, said Al Myers performed  $69\frac{1}{2}$  days labor in and upon said mining claim in the working and development thereof as aforesaid;

That for the work so performed, claimant received his board during the time he so worked, but nothing more; and that the sum of Three hundred and fourty-seven and 50-100 (\$347.50) dollars is now due for said labor so performed after deducting all just credits and offsets;

That Al Myers claims, and it is his intention to hold, a lien for the amount so due, upon the said Soo Quartz Mining Claim, and mine and lode thereon and therein situated, together with the improvements and machinery situated thereon or connected therewith, also the leasehold interest of W. L. Spaulding in and to the Soo Mining claim above described which lease is recorded at page 498, Vol. 5 of Leases in the office of the recorder for the Fairbanks Precinct, Fourth Division, Alaska, to which reference is made for a more complete description of said leasehold interest.

That the Soo Quartz Mining Claim is described as follows, to-wit: Commencing at the point of discovery on said claim; thence running in a southerly

thence in a westerly direction 1,500 feet to a post marked ~~Southwest Corner~~; thence in a northerly direction 300 feet to a post marked Center End; ~~direction 300 feet to a post marked Southeast corner~~; thence in a northerly direction 300 feet to a post marked Northwest Corner; thence in an easterly direction 1500 feet to a post marked Northeast Corner; thence in a southerly direction 300 feet to the place of beginning. Said claim being 1500 feet in length by 600 feet in width, and is situated about one-half mile northwest of Pedro Dome on the right limit of Dome creek opposite creek claim Number 9, and is bounded on the east by the Waterbury Quartz Mining Claim, all situate in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska; and that the location certificate of said Soo Quartz Mining Claim is recorded at page 73 Volume 12 of locations in the office of the Recorder of the Fairbanks Precinct, Alaska, to which reference is hereby made.

That the improvements and machinery upon which claimant also claims a lien, is a certain boiler house with boiler, hoist, five horse power engine and three stamp mill situated at the mouth of the shaft of the mine upon said Soo Quartz Mining Claim; also a certain two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situated at the head of Dome creek opposite the Soo Quartz Mining Claim and about one-quarter of a mile distant therefrom, together with the building in which said stamp



mill is situated.

That the Reliance Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, of which Raymond Brumbaugh is president, L. B. Clough vice president and R. C. Erchinger secretary, are the owners or reputed (owners of the said Soo Quartz Mining Claim and three stamp mill situated thereon, and the labor performed by claimant herein and above mentioned was performed with a knowledge of the said Reliance Mining Company, a corporation, and the officers thereof.

And the said W. L. Spaulding is the owner or reputed owner of all the machinery, stamp mill and equipment, and the building enclosing the same, above described, except the said three stamp mill.

That the said W. L. Spaulding and Raymond Brumbaugh, reputed to be copartners in the mining of said property, and by whom the said claimant herein was employed, are the lessees or reputed lessees of said mining property.

That thirty days has not elapsed since the last item of labor above mentioned was performed.

S. A. MARTIN,  
Agt. of AL. MYERS,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

S. A. Martin, being first duly sworn, on oath, says:  
That he is the agent of the lien claimant above men-



tioned and that he has read said claim of lien, knows the contents thereof, has knowledge of the facts stated therein, and that the same is true; and that said claim of lien contains among other things, a correct statements of the claimant's demand after deducting all just credits and set-offs.

S. A. MARTIN.

Subscribed and sworn to before me this 7th day of November, A. D. 1913.

'(SEAL)

T. A. MARQUAM,

A Notary Public for District of Alaska.

My commission will expire July 6, 1914.

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“EXHIBIT E I”

CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That A. L. Myers, of Fairbanks Alaska, has, by virtue of a contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, mining copartners, performed work and labor as hereinafter set forth as a miner in running tunnels and stopes and in the working and development of the Soo Quartz Mining Claim and the mine situate thereon; and said mining claim and mine together with the improvements thereon being at the time the property of the Reliance Mining Company, a corporation organized and existing under the laws of Nevada, and doing business in Alaska;

Said Soo Quartz Mining Claim is situated about one-half mile Northwest of Pedro Dome on the right

limit of Dome creek, opposite creek placer mining claim Number 9; said claim being 1500 feet long and 600 feet wide, the location certificate of which is recorded at page 73, Vol. 12 of Location in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Territory of Alaska, to which reference is hereby made for a complete description of said claim.

That between the 9th day of October, 1913, inclusive, and the 9th day of November, 1913, claimant performed as aforesaid 29½ days labor.

That the contract and reasonable price of wages for said work and labor so performed was five dollars per day, besides board.

That for said work there was due claimant in wages \$147.50 dollars, on account thereof claimant received \$54.75 and no more; That there are no other credits or set-offs against the same, and there is now due claimant the sum of \$92.75.

That said W. L. Spaulding was at the time mentioned herein the owner or reputed owner of a ten year leasehold interest in the said Soo Quartz Mining Claim beginning June 9th, 1913, which is recorded, November 5th, 1913, at page 498, Vol. 5 of Leases of the aforesaid records; and he is also the owner or reputed owner, of a two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate opposite to, and about one-quarter mile distant from Soo Quartz Mining Claim together with buildings inclosing same.

That claimant herein claims a lien for the amounts

due as aforesaid upon the said Soo Quartz Mining Claim and the mining machinery, buildings, stamp mill and improvements therein and thereon situated, all of which the Reliance Mining Company are the owners or reputed owners. He also claims a lien therefore, upon the leasehold interest in said Soo Quartz Mining Claim, owned by the said W. L. Spaulding as aforesaid; also two stamp mill of the said W. L. Spaulding above described and its equipment and buildings inclosing the same.

That the labor performed by claimant was performed and done with the knowledge of the said Reliance Mining Company and its officers.

That since last item of labor above mentioned was performed thirty days has not yet elapsed.

A. L. MYERS,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

A. L. Myers, being first duly sworn, on oath, says: That he is the lien claimant herein; that he has read the foregoing claim of lien, knows the contents thereof, and that the same is true: That said claim of lien contains a correct statement of claimant's demand after deducting all just credits and set-offs.

A. L. MYERS.

Subscribed and sworn to before me this 18th day of November, 1913.

(SEAL)

T. A. MARQUAM,

Notary Public in and for Alaska.

My commission expires July 6, 1914.



“EXHIBIT F”  
CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That John Kuhl, of the Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, has, by virtue of an oral contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, both of the same place, who are conducting mining operations on the Soo Quartz Mining Claim, herein after described, and who are reputed to be copartners conducting the said operations under the name of the SOO MINING COMANY, performed labor as a miner in running tunnels and stopes and in the working and development of that certain quartz mining claim known as the Soo Quartz Mining Claim, and the mine thereon and therein situated, which mining claim is hereinafter more particularly described:

That the contract and reasonable price of such labor so performed was the sum of five dollars per day, and board, and the said W. L. Spaulding and Raymond Brumbaugh agreed to pay claimant herein five dollars per day and board for such labor;

That between August 11, 1913 and the 8th day of October, 1913, inclusive, under the terms of said contract, said John Kuhl performed fifty-eight (58) days labor in and upon said mining claim in the working and development thereof as aforesaid;

That for the work so performed, claimant received his board during the time he so worked, but nothing more; and the sum of Two hundred and ninety

1(290.00) dollars is now due for said labor so performed after deducting all just credits and off-sets;

That John Kuhl claims, and it is his intention to hold, a lien for the amount so due, upon the said Soo Quartz Mining Claim, the mine and lode thereon, and therein situated, together with the improvements and machinery situated thereon or connected therewith, also the leasehold interest of W. L. Spaulding in and to the Soo Mining Claim above described which lease is recorded at page 498 Vol. 5, of Leases in the office of the recorder for the Fairbanks Precinct, Fourth Division, Alaska, to which reference is made for a more complete description of said leasehold interest.

That the Soo Quartz Mining Claim is described as follows, to-wit: Commencing at the point of discovery on said claim; thence running in a southerly direction 300 feet to a post marked southeast corner; thence in a westerly direction 1500 feet to a post marked Southwest corner; thence in a northerly direction 300 feet to a post marked Center End; thence in a northerly direction 300 feet to a post marked Northwest Corner; thence in an easterly direction 1500 feet to a post marked Northeast Corner; thence in a southerly direction 300 feet to the place of beginning. Said claim being 1500 feet in length by 600 feet in width, and is situated about one-half mile northwest of Pedro Dome on the right limit of Dome Creek opposite creek claim Number 9, and is bounded on the east by the Waterbury Quartz



Mining Claim; all situate in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska; that the location certificate of said Soo Quartz Mining Claim is recorded at page 73, Volume 12 of Locations in the office of the Recorder of the Fairbanks Precinct, Alaska, to which reference is hereby made.

That the improvements and machinery upon which claimant also claims a lien, is a certain boiler house, with boiler, hoist, five horsepower engine and three stamp mill situated at the mouth of the shaft of the mine upon said Soo Quartz Mining Claim; also a certain two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate at the head of Dome creek opposite the Soo Quartz Mining Claim and about one-quarter of a mile distant therefrom, together with the building in which said stamp mill is situated.

That the Reliance Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, of which Raymond Brumbaugh is president, L. B. Clough vice president and R. C. Erchinger secretary, are the owners or reputed owners of the said Soo Quartz Mining Claim, and the three stamp mill situate thereon; and the labor performed by claimant herein and above mentioned was performed with a knowledge of the said Reliance Mining Company, a corporation, and the officers thereof.

And the said W. L. Spaulding is the owner or re-



puted owner of all the machinery, stamp mill and equipment, and the building enclosing the same, above described, except the said three stamp mill.

That the said W. L. Spaulding and Raymond Brumbaugh, reputed to be copartners in the mining of said property, and by whom the said claimant herein was employed, are the lessess or reputed lessees of said mining property.

That thirty days has not elapsed since the last item of labor above mentioned was performed.

JACK KUHL,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

Jack Kuhl, being first duly sworn, on oath, says: That he is the lien claimant mentioned in the foregoing claim of lien; that he has read said claim of lien, knows the contents thereof, and that the same is true; and that said claim of lien contains, among other things, a correct statement of the claimant's demand, after deducting all just credits and set-offs.

JACK KUHL.

Subscribed and sworn to before me this 7th day of November, A. D. 1913.

(SEAL)

T. A. MARQUAM,

A Notary Public for District of Alaska.

My commission will expire July 6, 1914.

**"EXHIBIT F I"**  
**CLAIM OF LIEN**

**KNOW ALL MEN BY THESE PRESENTS:** That John Kuhl, of Fairbanks, Alaska, has by virtue of of a contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, mining copartners, performed work and labor as hereinafter set forth as a miner in running tunnels and stopes and in the working and development of the Soo Quartz Mining Claim and the mine situate thereon; and said mining claim and mine together with the improvements thereon being at the time the property of the Reliance Mining Company, a corporation, organized and existing under the laws of Nevada, and doing business in Alaska;

Said Soo Quartz Mining Claim is situated about one-half mile Northwest of Pedro Dome on the right limit of Dome Creek, opposite creek placer mining claim Nnumber 9; said claim being 1500 feet long and 600 feet wide, the location certificate of which is recorded at page 73, Vol. 12 of Locations in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Territory of Alaska, to which reference is hereby made for a complete description of said claim.

That between the 9th day of October, 1913, inclusive, and the 9th day of November, 1913, claimant performed as aforesaid 19 days labor.

That the contract and reasonable price of wages for said work and labor so performed was five dol-

lars per day, besides board.

That for said work there was due claimant in wages \$95.00 dollars, on account thereof claimant received \$39.25 and no more; That there are no other credits or set-offs against the same, and there is now due claimant the sum of 55.75.

That said W. L. Spaulding was at the time mentioned herein the owner or reputed owner of a ten year lease hold interest in the said Soo Quartz Mining Claim beginning June 9th, 1913, which is recorded November 5th, 1913, at page 498, Vol. 5 of Leases of the aforesaid records; and he is also the owner, or reputed owner, of a two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate opposite to, and about one-quarter mile distant from Soo Quartz Mining Claim together with buildings inclosing same.

That claimant herein claims a lien for the amounts due as aforesaid upon the said Soo Quartz Mining Claim and the mining machinery, buildings, stamp mill and improvements therein and thereon situated, all of which the Reliance Mining Company are the owners or reputed owners. He also claims a lien therefore, upon the lease hold interest in said Soo Quartz Mining Claim, owned by the said W. L. Spaulding as aforesaid; also two stamp mill of the said W. L. Spaulding above described and its equipment and buildings inclosing the same.

That the labor performed by claimant was performed and done with the knowledge of the said



Reliance Mining Company and its officers.

That since last item of labor above mentioned was performed thirty days has not yet elapsed.

JACK KUHL,

Lien Claimant.

United States of America,

Territory of Alaska,—ss:

Jack Kuhl, being first duly sworn, on oath, says: That he is the lien claimant herein; that he has read the foregoing claim of lien, knows the contents thereof, and that the same is true; That said claim of lien contains a correct statement of claimant's demand after deducting all just credits and set-offs.

JACK KUHL.

Subscribed and sworn to before me this 17th day of November, 1913.

(SEAL)

T. A. MARQUAM,

Notary Public in and for Alaska.

My commission will expire July 6, 1914.

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“EXHIBIT G”

CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That Olie Simonson, of the Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, has, by virtue of an oral contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, both of the same place, who are conducting mining operations on the Soo Quartz Mining Claim hereinafter described, and who are reputed to be copartners con-

ducting the said operations under the name of the SOO MINING COMPANY, performed labor as a miner in running tunnels and stopes and in the working and development of that certain quartz mining claim known as the Soo Quartz Mining Claim, and the mine thereon and therein situated, which mining claim is hereinafter more particularly described;

That the contract and reasonable price of such labors so performed was the sum of five dollars per day, and board, and the said W. L. Spaulding and Raymond Brumbaugh agreed to pay claimant herein five dollars per day and board for such labor;

That between Sept. 1, 1913, and the 8th day of October, 1913, inclusive, under the terms of said contract, said Olie Simonson performed 32 days labor in and upon said mining claim in the working and development thereof as aforesaid;

That for the work so performed, claimant received his board during the time he so worked, but nothing more; and the sum of One hundred and sixty (\$160.00) dollars is now due for said labor so performed after deducting all just credits and off-sets.

That Olie Simonson claims, and it is his intention to hold, a lien for the amount so due, upon the said Soo Quartz Mining Claim, the mine and lode thereon, and therein situated, together with the improvements and machinery situated thereon or connected therewith; also the leasehold interest of W. L. Spaulding in and to the Soo Mining Claim above described which lease is recorded at page 498 Vol. 5

of Leases in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Alaska, to which reference is made for a more complete description of said leasehold interest.

That the Soo Quartz Mining Claim is described as follows, to-wit: Commencing at the point of discovery on said claim; thence running in a southerly direction 300 feet to a post marked Southeast corner; thence in a westerly direction 1500 feet to a post marked Southwest corner; thence in a northerly direction 300 feet to a post marked Center End; thence in a nortrherly direction 300 feet to a post marked Northwest Corner; thence in an easterly direction 1500 feet to a post marked northeast Corner; thence in a southerly direction 300 feet to the place of beginning. Said claim being 1500 feet in length by 600 feet in width, and is situated about one-half mile northwest of Pedro Dome on the right limit of Dome Creek opposite creek claim Number 9, and is bounded on the east by the Waterbury Quartz Mining Claim; all situate in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska; That the location certificate of said Soo Quartz Mining Claim is recorded at page 73, Vol. 12 of Locations in the office of the Recorder for the Fairbanks Precinct, Alaska, to which reference is hereby made.

That the improvements and machinery upon which claimant also claims a lien, is a certain boiler house, with boiler, hoist, five horse power engine and three



stamp mill situated at the mouth of the shaft of the mine upon said Soo Quartz Mining Claim; also a certain two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate at the head of Dome creek opposite the Soo Quartz Mining Claim and about one-quarter of a mile distant therefrom, together with the building in which said stamp mill is situated.

That the Reliance Mining Company, a corporation organized and existing by virtue of the laws of the State of Nevada, of which Raymond Brumbaugh is president, L. B. Clough, vice-president and R. C. Erchinger secretary, are the owners or reputed owners of the said Soo Quartz Mining Claim, and the three stamp mill situate thereon; and the labor performed by claimant herein and above mentioned was performed with a knowledge of the said Reliance Mining Company, a corporation, and the officers thereof.

And the said W. L. Spaulding is the owner or reputed owner of all the machinery, stamp mill and equipment, and the building enclosing the same, above described, except said three stamp mill.

That the said W. L. Spaulding and Raymond Brumbaugh, reputed to be copartners in the mining of said property, and by whom the said claimant herein was employed, are the lessees or reputed lessees of said mining property.

That thirty days has not elapsed since the last item

of labor above mentioned was performed.

S. A. MARTIN, Agent of  
OLIE SIMONSON,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

S. A. Martin, being first duly sworn, on oath, says:  
That he is the agent of the lien claimant above mentioned; and that he has read said claim of lien, knows the contents thereof, has knowledge of the facts therein stated, and that the same is true, and that said claim of lien contains, among other things, a correct statement of the claimant's demand, after deducting all just credits and set-offs.

S. A. MARTIN,

Subscribed and sworn to before me this 7th day  
of November, A. D. 1913.

(SEAL)

T. A. MARQUAM,

A Notary Public for District of Alaska.  
My commission will expire July 6, 1914.

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“EXHIBIT G I”  
CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS:  
That Ole Simonson, of Fairbanks, Alaska, has by virtue of a contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, mining copartners, performed work and labor as hereinafter set forth as a miner in running tunnels and stopes and in the working and development of the Soo Quartz Mining

Claim and the mine situated thereon; and said mining claim and mine together with the improvements thereon being at the time the property of the Reliance Mining Company, a corporation organized and existing under the laws of Nevada, and doing business in Alaska;

Said Soo Quartz Mining Claim is situated about one-half mile distant northwest of Pedro Dome on the right limit of Dome creek, opposite creek placer mining claim Number 9; said claim being 1500 feet long and 600 feet wide, the location certificate of which is recorded at page 73, Vol. 12 of Locations in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Territory of Alaska, to which reference is hereby made for a complete description of said claim.

That between the 9th day of October, 1913, inclusive, and the 9th day of November, 1913, claimant performer as aforesaid 25 days labor.

That the contract and reasonable price of wages for said work and labor so performed was five dollars per day, besides board.

That for said work there was due claimant in wages \$125.00 dollars, on account thereof claimant received \$51.65 and no more; That there are no other credits or set-offs against the same, and there is now due claimant the sum of \$73.35.

That said W. L. Spaulding was at the time mentioned herein the owner or reputed owner of a ten year lease hold interest in the said Soo Quartz Min-



ing Claim beginning June 9th, 1913, which is recorded November 5th, 1913, at page 298, Vol. 5 of Leases of the aforesaid records; and he is also the owner, or reputed owner, of a two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate opposite to, and about one-quarter mile distant from Soo Quartz Mining Claim together with buildings inclosing same.

That claimant herein claims a lien for the amounts due as aforesaid upon the said Soo Quartz Mining Claim and the mining machinery, buildings, stamp mill and improvements therein and thereon situated, of all of which the Reliance Mining Company are the owners or reputed owners. He also claims a lien therefore upon the lease hold interest in said Soo Quartz Mining Claim, owned by the said W. L. Spaulding as aforesaid; also two stamp mill of the said W. L. Spaulding above described and its equipment and buildings inclosing the same.

That the labor performed by claimant was performed and done with the knowledge of the said Reliance Mining Company and its officers.

That since last item of labor above mentioned was performed thirty days has not yet elapsed.

OLIE SIMONSON,

Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

Ole Simonson, being first duly sworn, on oath, says:  
That he is the lien claimant herein; that he has read

the foregoing claim of lien, knows the contents thereof, and that the same is true: That said claim of lien contains a correct statement of claimant's demand, after deducting all just credits and set-offs.

OLIE SIMONSON.

Subscribed and sworn to before me this 19th day of November, 1913.

(SEAL)

T. A. MARQUAM.

Notary Public in and for Alaska.  
My commission expires July 6, 1914.

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"EXHIBIT H"

CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That Martin Milland, of the Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, has, by virtue of an oral contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, both of the same place, who are conducting mining operations on the Soo Quartz Mining Claim hereinafter described, and who are reputed to be copartners conducting the said operations under the name of the SOO MINING COMPANY, performed labor as a blacksmith assisting in running tunnels and stopes and in the working and development of that certain quartz mining claim known as the Soo Quartz Mining Claim, and the mine thereon and therein situated which mining claim is hereinafter more particularly described;

That the contract and reasonable price of such labor so performed was the sum of six dollars per

day, and board, and the said W. L. Spaulding and Raymond Brumbaugh agreed to pay claimant herein five dollars per day and board for such labor;

That between August 14, 1913, and the 8th day of October, 1913, inclusive, under the terms of said contract, said Martin Milland performed 53½ days labor in and upon said mining claim in the working and development thereof as a blacksmith as aforesaid;

That for the work so performed, claimant received his board during the time he so worked, but nothing more, save and except the sum of \$50.00, and that the sum of Two hundred and seventy-one (\$271.00) dollars is now due for said labor so performed after deducting all just credits and off-sets;

That Martin Milland claims, and it is his intention to hold, a lien for the amount so due, upon the said Soo Quartz Mining Claim, the mine and lode thereon, and therein situated, together with the improvements and machinery situated thereon or connected therewith, also the lease hold interest of W. L. Spaulding in and to the Soo Mining Claim above described which lease is recorded at page 498, Vol. 5, of Leases in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Alaska, to which reference is made for a more complete description of said lease hold interest.

That the Soo Quartz Mining Claim is described as follows, to-wit: Commencing at the point of discovery on said claim; thence running in a southerly direction 300 feet to a post marked Southeast Cor-



ner; thence in a westerly direction 1500 feet to a post marked Southwest Corner; thence in a northerly direction 300 feet to a post marked Center End; thence in a northerly direction 300 feet to a post marked Northwest Corner; thence in an easterly direction 1500 feet to a post marked Northeast Corner; thence in a southerly direction 300 feet to the place of beginning. Said claim being 1500 feet in length by 600 feet in width, and is situated about one-half mile northwest of Pedro Dome on the right limit of Dome creek opposite creek claim Number 9, and is bounded on the east by the Waterbury Quartz Mining Claim; all situate in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska; that the location certificate of said Soo Quartz Mining Claim is recorded at page 73, Volume 12 of Locations in the office of the Recorder of the Fairbanks Precinct, Alaska, to which reference is hereby made.

That the improvements and machinery upon which claimant also claims a lien is a certain boiler house, with boiler and hoist and five horse power engine and three stamp mill situated at the mouth of the shaft of the mine upon said Soo Quartz Mining Claim; also a certain two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate at the head of Dome creek opposite the Soo Quartz Mining Claim and about one-quarter of a mile distant therefrom, together with the building in which said stamp mill is situated.

That the Reliance Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, of which Raymond Brumbaugh is president, L. B. Clough vice president and R. C. Erchinger secretary, are the owners or reputed owners of the said Soo Quartz Mining Claim and the three stamp mill situate thereon, and the labor performed by claimant herein and above mentioned was performed with a knowledge of the said Reliance Mining Company, a corporation, and the officers thereof.

And the said W. L. Spaulding is the owner or reputed owner of all the machinery, stamp mill and equipment, and the building enclosing the same, above described except the said three stamp mill.

That the said W. L. Spaulding and Raymond Brumbaugh, reputed to be copartners in the mining of said property, and by whom the said claimant herein was employed, are the lessees or reputed lessees of said mining property.

That thirty days has not elapsed since the last item of labor above mentioned was performed.

S. A. MARTIN,  
Agent of MARTIN MILLAND,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss.

S. A. Martin, being first duly sworn, on oath, says: That he is the agent of the lien claimant above mentioned, and that he has read said claim of lien, knows

the contents thereof, and has knowledge of the facts therein stated, and that the same is true; and that said claim of lien contained among other things, a correct statement of the claimant's demand after deducting all just credits and set-offs

S. A. MARTIN.

Subscribed and sworn to before me this 7th day of November, A. D. 1913.

(Seal)

T. A. MARQUAM,

A Notary Public for District of Alaska.

My commission will expire July 6, 1913/

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“EXHIBIT H I”  
CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS:  
That Martin Milland, of Fairbanks, Alaska, has, by virtue of a contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, mining co-partners, performed work and labor as hereinafter set forth as a miner in running tunnels and stopes and in the working and development of the Soo Quartz Mining Claim and the mine situate thereon; and said mining claim and mine together with the improvements thereon being at the time the property of the Reliance Mining Company, a corporation organized and existing under the laws of Nevada, and doing business in Alaska;

Said Soo Quartz Mining Claim is situated about one-half mile distant Northwest of Pedro Dome on the right limit of Dome creek, opposite creek placer



mining claim Number 9; said claim being 1500 feet long and 600 feet wide, the location certificate of which is recorded at page 73, Vol. 12 of Locations in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Territory of Alaska, to which reference is hereby made for a complete description of said claim.

That between the 9th day of October, 1913, inclusive, and the 9th day of November, 1913, claimant performed as aforesaid 32 days labor.

That the contract and reasonable price of wages for said work and labor so performed was five dollars per day, besides board.

That for said work there was due claimant in wages \$192.00 dollars, on account thereof claimant received \$69.50 and no more; That there are no other credits or set-offs against the same, and there is now due claimant the sum of \$122.50.

That said W. L. Spaulding was at the time mentioned herein the owner or reputed owner of a ten year leasehold interest in the said Soo Quartz Mining Claim beginning June 9th, 1913, which is recorded, November 5th, 1913, at page 298, Vol. 5 of Leases of the aforesaid records; and he is also the owner, or reputed owner, of a two stamp mill and equipment formerly known as the Sutherland Stamp mill, situate opposite to, and about one-quarter mile distant from Soo Quartz Mining Claim together with buildings inclosing the same.

That claimant herein claims a lien for the amounts

due as aforesaid upon the said Soo Quartz Mining Claim and the mining machinery, buildings, stamp mill and improvements therein and thereon situated, all of which the Reliance Mining Company are the owners or reputed owners. He also claims a lien therefore, upon the lease hold interest in said Soo Quartz Mining Claim, owned by the said W. L. Spaulding as aforesaid; also two stamp mill of the said W. L. Spaulding as above described and its equipment and buildings inclosing the same.

That the labor performed by claimant was performed and done with the knowledge of the said Reliance Mining Company and its officers.

That since last item of labor above mentioned was performed thirty days has not yet elapsed.

MARTIN MILLAND,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

Martin Milland, being first duly sworn, on oath, says: That he is the lien claimant herein; that he has read the foregoing claim of lien, knows the contents thereof, and that the same is true: That said claim of lien contains a correct statement of claimant's demand after deducting all just credits and set-offs.

MARTIN MILLAND,

Subscribed and sworn to before me this 15th day of November, 1913.

(SEAL)

T. A. MARQUAM,  
Notary Public in and for Alaska.  
My commission expires July 6, 1913.

“EXHIBIT I”  
CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That Steve Paskalich, of the Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, has, by virtue of an oral contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, both of the same place, who are conducting mining operations on the Soo Quartz Mining Claim, hereinafter described, and who are reputed to be copartners conducting the said operations under the name of the SOO MINING COMPANY, performed labor as a miner in running tunnels and stopes and in the working and development of that certain quartz mining claim known as the Soo Quartz Mining Claim, and the mine thereon and therein situated, which mining claim is hereinafter more particularly described;

That the contract and reasonable price of such labor so performed was the sum of five dollars per day, and board, and the said W. L. Spaulding and Raymond Brumbaugh agreed to pay claimant herein five dollars per day and board for such labor;

That between September 25th, 1913, and the 8th day of October, 1913, inclusive, under the terms of said contract, said Steve Paskalich performed 13½ days labor in and upon said mining claim in the working and development thereof as aforesaid;

That for the work so performed, claimant received his board during the time he so worked, but nothing



more; and that the sum of Sixty-seven and 50-100 (\$67.50) dollars is now due for said labor so performed after deducting all just credits and off-sets;

That Steve Paskalich claims, and it is his intention to hold, a lien for the amount so due, upon the said Soo Quartz Mining Claim, the mine and lode thereon, and therein situated, together with the improvements and machinery situated thereon or connected therewith, also the lease hold interest of W. L. Spaulding in and to the Soo Mining Claim above described which lease is recorded at page 498, Vol. 5, of Leases in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Alaska, to which reference is made for a more complete description of said lease hold interest.

That the Soo Quartz Mining Claim is described as follows, to-wit: Commencing at the point of discovery on said claim; thence running in a southerly direction 300 feet to a post marked Southeast corner; thence in a westerly direction 1500 feet to a post marked Southwest Corner; thence in a northerly direction 300 feet to post marked Center End; thence in a northerly direction 300 feet to a post marked Northwest Corner; thence in an easterly direction 1500 feet to a post marked Northeast Corner; thence in a southerly direction 300 feet to the place of beginning. Said claim being 1500 feet in length by 600 feet in width, and is situated about one-half mile northwest of Pedro Dome on the right limit of Dome creek opposite creek claim Number 9,

and is bounded on the east by the Waterbury Quartz Mining Claim, all situated in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska; and that the location certificate of said Soo Quartz Mining Claim is recorded at page 73, Volume 12 of Locations in the office of the Recorder of the Fairbanks Precinct, Alaska, to which reference is hereby made.

That the improvements and machinery upon which claimant also claims a lien, is a certain boiler house with boiler, hoist, five horse power engine and three stamp mill situated at the mouth of the shaft of the mine upon said Soo Quartz Mining Claim; also a certain two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate at the head of Dome Creek opposite the Soo Quartz Mining Claim and about one-quarter of a mile distant therefrom, together with the building in which said stamp mill is situated.

That the Reliance Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, of which Raymond Brumbaugh is president, L. B. Clough vice-president and R. C. Erchinger secretary, are the owners or reputed owners of the said Soo Quartz Mining Claim and three stamp mill situate thereon, and the labor performed by claimant herein and above mentioned was performed with a knowledge of the said Reliance Mining Company, a corporation, and the officers thereof.

And the said W. L. Spaulding is the owner or reputed owner of all the machinery, stamp mill and equipment, and the building inclosing the same, above described, except the said three stamp mill.

That the said W. L. Spaulding and Raymond Brumbaugh, reputed to be copartners in the mining of said property, and by whom the said claimant herein was employed, are the lessees or reputed lessees of said mining property.

That thirty days has not elapsed since the last item of labor above mentioned was performed.

STEVE PASKALICH,

Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

Steve Paskalich, being first duly sworn, on oath, says: That he is the lien claimant mentioned in the foregoing claim of lien; and that he has read said claim of lien, knows the contents thereof, and that the same is true; and that said claim of lien contains among other things, a correct statement of the claimant's demand after deducting all just credits and set-offs.

STEVE PASKALICH.

Subscribed and sworn to before me this 7th day of November, A. D. 1913.

(SEAL)

T. A. MARQUAM,

A Notary Public for District of Alaska.

My commission expires July 6, 1914.



“EXHIBIT I 1.”

CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That Steve Paskalich of Fairbanks, Alaska, has, by virtue of a contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, mining copartners, performed work and labor as hereinafter set forth as a miner in running tunnels and stopes and in the working and development of the Soo Quartz Mining Claim and the mine situate thereon; and said mining claim and mine together with the improvements thereon being at the time the property of the Reliance Mining Company, a corporation organized and existing under the laws of Nevada and doing business in Alaska;

Said Soo Quartz Mining Claim is situated about one-half mile northwest of Pedro Dome on the right limit of Dome creek, opposite creek placer mining claim Number 9; said claim being 1500 feet long and 600 feet wide, the location certificate of which is recorded at page 73, Vol. 12 of Locations in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Territory of Alaska, to which reference is hereby made for a complete description of said claim.

That between the 9th day of October, 1913, inclusive, and the 9th day of November, 1913, claimant performed as aforesaid 25½ days labor.

That the contract and reasonable price of wages for said work and labor so performed was five dollars per day, besides board.

That for said work there was due claimant in wages \$127.50 dollars, on account thereof claimant received \$51.75 and no more; That there are no other credits or set-offs against the same, and there is now due claimant the sum of \$75.75.

That said W. L. Spaulding was at the time mentioned herein the owner or reputed owner of a ten year lease hold interest in the said Soo Quartz Mining Claim beginning June 9th, 1913, which is recorded, November 5th, 1913, at page 498, Vol. 5 of Leases of the aforesaid records; and he is also the owner, or reputed owner, of a two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situated opposite to, and about one-quarter mile distant from Soo Quartz Mining Claim together with buildings inclosing same.

That claimant herein claims a lien for the amounts due as aforesaid upon the said Soo Quartz Mining Claim and the mining machinery, buildings, stamp mill and improvements therein and thereon situated, all of which the Reliance Mining Company are the owners, or reputed owners. He also claims a lien therefore, upon the lease hold interest in said Soo Quartz Mining Claim by the said W. L. Spaulding as aforesaid; also two stamp mill of the said W. L. Spaulding above described and its equipment and buildings inclosing the same.

That the labor performed by claimant was performed and done with the knowledge of the said Reliance Mining Company and its officers.

That since last item of labor above mentioned was performed thirty days has not yet elapsed.

STEVE PASKALICH,

Lien Claimant.

United States of America,

Territory of Alaska,—ss:

Steve Paskalich, being first duly sworn, on oath, says: That he is the lien claimant herein; that he has read the foregoing claim of lien, knows the contents thereof, and that the same is true: That said claim of lien contains a correct statement of claimant's demand after deducting all just credits and set-offs.

STEVE PASKALICH.

Subscribed and sworn to before me this 20th day of November, 1913.

(SEAL)

T. A. MARQUAM,

Notary Public in and for Alaska.

My commission expires July 6, 1914.

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“EXHIBIT J.”

CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That H. H. Dech, of the Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, has, by virtue of an oral contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, both of the same place, who are conducting mining operations on the Soo Quartz Mining Claim, hereinafter described, and who are reputed to be copartners con-



ducting the said operations under the name of the SOO MINING COMPANY, performed labor as a miner in running tunnels and stopes and in the working and development of that certain quartz mining claim known as the Soo Quartz Mining Claim, and the mine thereon and therein situated, which mining claim is hereinafter more particularly described;

That the contract and reasonable price of such labor so performed was the sum of five dollars per day, and board, and the said W. L. Spaulding and Raymond Brumbaugh agreed to pay claimant herein five dollars per day and board for such labor;

That between August 5th, 1913, and the 8th day of October, 1913, inclusive, under the terms of said contract, said H. H. Dech performed 61½ days labor in and upon said mining claim in the working and development thereof as aforesaid;

That for the work so performed claimant received his board during the time he so worked, but nothing more except the sum of \$20.00, and that the sum of Two hundred and eighty-seven and 50-100 (\$287.50) dollars is now due for said labor so performed after deducting all just credits and offsets.

That H. H. Dech claims, and it is his intention to hold, a lien for the amount so due, upon the said Soo Quartz Mining Claim, the mine and lode thereon, and therein situated, together with the improvements and machinery situated thereon or connected therewith, also the lease hold interest of W. L. Spaulding in and to the Soo Mining Claim above described

which lease is recorded at page 498, Vol. 5, of Leases in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Alaska, to which reference is made for a more complete description of said lease hold interest.

That the Soo Quartz Mining Claim is described as follows, to-wit: Commencing at the point of discovery on said claim; thence running in a southerly direction 300 feet to a post marked Southeast corner; thence in a westerly direction 1500 feet to a post marked Southwest Corner; thence in a northely direction 300 feet to a post marked Center End; thence in a northerly direction 300 feet to a post marked Northwest Corner; thence in an easterly direction 1500 feet to a post marked Northeast Corner; thence in a southerly direction 300 feet to the place of beginning. Said claim being 1500 feet in length by 600 feet in width, and is situated about one-half mile northwest of Pedro Dome on the right limit of Dome creek opposite creek claim Number 9, and is bounded on the east by the Waterbury Quartz Mining Claim, all situate in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska; and that the location certificate of said Soo Quartz Mining Claim is recorded at page 73, Volume 12 of Locations in the office of the Recorder of the Fairbanks Precinct, Alaska, to which reference is hereby made.

That the improvements and machinery upon which claimant also claims a lien, is a certain boiler house

with boiler, hoist, five horse power engine and three stamp mill situated at the mouth of the shaft of the mine upon said Soo Quartz Mining Claim; also a certain two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate at the head of Dome Creek opposite the Soo Quartz Mining Claim and about one-quarter of a mile distant therefrom, together with the building in which said stamp mill is situated.

That the Reliance Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, of which Raymond Brumbaugh is president, L. B. Clough vice president and R. C. Erchinger secretary, are the owners or reputed owners of the said Soo Quartz Mining Claim and three stamp mill situate thereon, and the labor performed by claimant herein and above mentioned was performed with a knowledge of the said Reliance Mining Company, a corporation, and the officers thereof.

And the said W. L. Spaulding is the owner or reputed owner of all the machinery, stamp mill and equipment, and the building inclosing the same, above described, except the said three stamp mill.

That the said W. L. Spaulding and Raymond Brumbaugh, reputed to be copartners in the mining of said property, and by whom the said claimant herein was employed, are the lessees or reputed lessees of said mining property.

That thirty days has not elapsed since the last



item of labor above mentioned was performed.

H. H. DECH,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

H. H. Deck, being first duly sworn, on oath says:  
That he is the lien claimant mentioned in the foregoing claim of lien; and that he has read said claim of lien, knows the contents thereof, and that the same is true; and that said claim of lien contained, among other things, a correct statement of the claimant's demand after deducting all just credits and set-offs.

H. H. DECH.

Subscribed and sworn to before me this 7th day  
of November, A. D. 1913.

(SEAL)

T. A. MARQUAM,  
A Notary Public for District of Alaska.  
My commisssion expires July 6, 1914.

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“EXHIBIT J 1”  
CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS:  
That H. H. Dech, of Fairbanks, Alaska, has, by virtue of a contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, mining co-partners, performed work and labor as hereinafter set forth as a miner in running tunnels and stopes and in the working and development of the Soo Quartz Mining Claim and the mine situate thereon;

and said mining claim and mine together with the improvements thereon being at the time the property of the Reliance Mining Company, a corporation organized and existing under the laws of Nevada, and doing business in Alaska;

Said Soo Quartz Mining Claim is situated about one-half mile Northwest of Pedro Dome on the right limit of Dome creek, opposite creek placer mining claim Number 9; said claim being 1500 feet long and 600 feet wide, the location certificate of which is recorded at page 73, Vol. 12 of Locations in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Territory of Alaska, to which reference is hereby made for a complete description of said claim.

That between the 9th day of October, 1913, inclusive, and the 9th day of November, 1913, claimant performed as aforesaid 23 days labor.

That the contract and reasonable price of wages for work and labor so performed was five dollars per day, besides board.

That for said work there was due claimant in wages \$72.50 dollars, on account thereof claimant received \$40.00 and no more; That there are no other credits or set-offs against the same, and there is now due claimant the sum of \$32.50.

That said W. L. Spaulding was at the time mentioned herein the owner or reputed owner of a ten year lease hold interest in the said Soo Quartz Mining Claim beginning June 9th, 1913, which is recorded, November 5th, 1913, at page 498, Vol. 5 of

Leases of the aforesaid records; and he is also the owner, or reputed owner, of a two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate opposite to, and about one-quarter mile distant from Soo Quartz Mining Claim together with buildings inclosing same.

The claimant herein claims a lien for the amounts due as aforesaid upon the said Soo Quartz Mining Claim and the mining machinery, buildings, stamp mill and improvements therein and thereon situated, all of which the Reliance Mining Company are the owners, or reputed owners. He also claims a lien therefore, upon the lease hold interest in said Soo Quartz Mining Claim by the said W. L. Spaulding as aforesaid; also two stamp mill of the said W. L. Spaulding above described and its equipment and buildings inclosing the same.

That the labor performed by claimant was performed and done with the knowledge of the said Reliance Mining Company and its officers.

That since last item of labor above mentioned was performed thirty days has not yet elapsed.

H. H. DECH,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

H. H. Dech, being first duly sworn, on oath, says: That he is the lien claimant herein; that he has read the foregoing claim of lien, knows the contents thereof, and that the same is true; That said claim



of lien contains a correct statement of claimant's demand after deducting all just credits and set-offs.

H. H. DECH.

Subscribed and sworn to before me this 15th day of November, 1913.

(SEAL)

T. A. MARQUAM,

Notary Public in and for Alaska.

My commission expires July 6, 1914.

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"EXHIBIT K."

CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That Mrs. H. H. Dech, of the Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, has, by virtue of an oral contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, both of the same place, who are conducting mining operations on the Soo Quartz Mining Claim hereinafter described, and who are reputed to be copartners conducting said operations under the name of the SOO MINING COMPANY, performed labor as cook for the crew of miners and employes of W. L. Spaulding and Raymond Brumbaugh employed on, and as such cook assisted in the working and development of the said mining claim and the mine and lode situate thereon that certain quartz mining claim known as the Soo Quartz Mining Claim and the mine thereon and therein situated, which mining claim is hereinafter more particularly described.

That the contract and reasonable price of such

labor so performed was the sum of five dollars a day and board, and the said W. L. Spaulding and Raymond Brumbaugh agreed to pay claimant herein five dollars a day and board for such labor.

That between July fourteenth, 1913, and the 8th day of October, 1913, inclusive, under the terms of said contract, said Mrs. H. H. Dech performed 81 days labor in and upon said mining claim in the working and development thereof as aforesaid.

That for the work so performed, claimant received her board during the time she so worked, but nothing more; and that the sum of four hundred and five (\$405.00) dollars is now due for said labor so performed, after deducting all just credits and offsets.

That Mrs. H. H. Dech claims, and it is her intention to hold a lien for the amount so due upon the said Soo Quartz Mining Claim, the mine and lode thereon and therein situated, together with the improvements and machinery situated thereon, or connected therewith, and hereinafter described; also the leasehold interest held by W. L. Spaulding in and to the Soo Quartz Mining Claim above mentioned from the owners thereof, the lease of which is recorded at page 498, Vol. 5 of Leases in the office of the recorder for the Fairbanks Recording Precinct, Fourth Division, Alaska, to which record reference is hereby made for a more complete description of said leasehold interest.

That the Soo Quartz Mining Claim is described

as follows, to-wit: Commencing at the point of discovery on said claim; thence running in a southerly direction 300 feet to a post marked southeast corner; thence in a westerly direction 1500 feet to a post marked southwest corner; thence in a northerly direction 300 feet to a post marked Center End; thence in a northely direction 300 feet to a post marked northwest corner; thence in an easterly direction 1500 feet to a post marked northeast corner; thence in a southerly direction 300 feet to the place of beginning; said claim being 1500 feet in length by 600 feet in width, and is situate about one-half mile northwest of Pedro Dome on the right limit of Dome Creek opposite creek claim Number 9, and is bounded on the east by the Waterbury Quartz Mining Claim; all situate in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska; that the location certificate of said Soo Quartz Mining Claim is recorded at page 73, Vol. 12 of Locations, in the office of the Recorder of the Fairbanks Precinct, Alaska, to which reference is hereby made.

That the improvements and machinery upon which claimant also claims a lien is a certain boiler house, with boiler, hoist, five horse power engine and three stamp mill, situate at the mouth of the shaft of the mine upon said Soo Quartz Mining Claim, also a certain two stamp mill and equipment, formerly known as the Sutherland Stamp Mill, situate at the head of Dome Creek opposite the Soo Quartz Min-



ing Claim and about a quarter of a mile distant therefrom; together with building in which said stamp mill is situated.

That the Reliance Mining Comapny, a corporation organized and existing under and by virtue of the laws of the State of Nevada, of which Raymond Brumbaugh is president, L. B. Clough vice president and R. C. Erchinger secretary, are the owners or reputed owners of the said Soo Quartz Mining Claim and the three stamp mill situated thereon. And the labor performed by claimant herein and above mentioned was furnished with a knowledge of the said Reliance Mining Company, a corporation, and the officers thereof.

And the said W. L. Spaulding is the owner or reputed owner of all the machinery, stamp mill and equipment, and the building inclosing the same, above described, except the said three stamp mill.

That the said W. L. Spaulding and Raymond Brumbaugh, reputed to be copartners in the mining of said property, and by whom the lien claimant herein was employed, are the lessees or reputed lessees of said mining property.

That thirty days has not elapsed since the last item of labor above mentioned was performed.

MRS. H. H. DECH,

Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

Mr. H. H. Dech, being first duly sworn, on oath,

says: That he is the husband and agent of the lien claimant mentioned in the foregoing claim of lien; that he has read claim of lien, knows the contents thereof and has knowledge of the facts therein stated and that the same is true; and that said claim of lien contains, among other things, a correct statement of the claimant's demand, after deducting all just credits and set-offs.

H. H. DECH.

Subscribed and sworn to before me this 7th day of November, 1913.

(SEAL)

T. A. MARQUAM.

Notary Public in and for the Territory of Alaska.

My commission expires July 6, 1914.

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"EXHIBIT K 1."

CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That Mrs. H. H. Dech of Fairbanks, Alaska, has, by virtue of a contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, mining co-partners, performed work and labor as hereinafter set forth as a cook thereby assisting in the work of running tunnels and stopes and in the working and development of the Soo Quartz Mining Claim and the mine situate thereon; and said mining claim and mine together with the improvements thereon being at the time the property of the Reliance Mining Company, a corporation organized and existing

under the laws of Nevada, and doing business in Alaska.

Said Soo Quartz Mining Claim is situated about one-half mile Northwest of Pedro Dome on the right limit of Dome creek, opposite creek placer mining claim Number 9; said claim being 1500 feet long and 600 feet wide, the location certificate of which is recorded at page 73, Vol. 12 of Locations in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Territory of Alaska, to which reference is hereby made for a complete description of said claim.

That between the 9th day of October, 1913, inclusive, and the 14th day of November, 1913, claimant performed as aforesaid 33½ days labor.

That the contract and reasonable price of wages for said work and labor so performed was five dollars per day, besides board.

That for said work there was due claimant in wages \$167.50 dollars, on account thereof claimant received \$57.85 and no more; That there are no other credits or set-offs against the same, and there is now due claimant the sum of \$109.65.

The said W. L. Spaulding was at the time mentioned herein the owner or reputed owner of a ten year leasehold interest in the said Soo Quartz Mining Claim beginning June 9th, 1913, which is recorded, November 5th, 1913, at page 498, Vol. 5 of Leases of the aforesaid records; and he is also the owner, or reputed owner, of a two stamp mill and



equipment formerly known as the Sutherland Stamp Mill, situate opposite to, and about one-quarter mile distant from Soo Quartz Mining Claim together with buildings inclosing same.

That claimant herein claims a lien for the amounts due as aforesaid upon the said Soo Quartz Mining Claim and the mining machinery, buildings, stamp mill and improvements therein and thereon situated, all of which the Reliance Mining Company are the owners or reputed owners. He also claims a lien therefore, upon the leasehold interest in said Soo Quartz Mining Claim, owned by the said W. L. Spaulding as aforesaid; also two stamp mill of the said W. L. Spaulding above described and its equipment and buildings inclosing the same.

That the labor performed by claimant was performed and done with the knowledge of the said Reliance Mining Company and its officers.

That since last item of labor above mentioned was performed thirty days has not yet elapsed.

MRS. DECH,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

Mrs. H. H. Dech, being first duly sworn, on oath, says: That he is the lien claimant herein; that he has read the foregoing claim of lien, knows the contents thereof, and that the same is true: That said claim of lien contains a correct statement of claimant's

demand after deducting all just credits and set-offs.

MRS. DECH.

Subscribed and sworn to before me this 18th day of November, 1913.

!(SEAL)

T. A. MARQUAM,

Notary Public in and for Alaska.

My commission expires July 6th, 1914.

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“EXHIBIT L.”

CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS:

That Hugh Ferry of the Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, has, by virtue of an oral contract heretofore made with W. L. Spaulding and Raymond Rumbaugh, both of the same place, who are conducting mining operations on the Soo Quartz Mining Claim hereinafter described, and who are reputed to be copartners conducting the said operations under the name of the SOO MINING COMPANY, performed labor as a miner in running tunnels and stopes and in the working and development of that certain quartz mining claim known as the Soo Quartz Mining Claim, and the mine thereon and therein situated, which mining claim is thereafter more particularly described;

That the contract and reasonable price of such labor so performed was the sum of five dollars per day, and board, and the said W. L. Spaulding and Raymond Brumbaugh agreed to pay claimant herein five dollars per day and board for such labor;

That between September 13, 1913 and the 8th day of October, 1913, inclusive, under the terms of said contract, said Hugh Ferrry performed twenty-six (26) days labor in and upon said mining claim in the working and development thereof as aforesaid;

That for the work so performed, claimant received his board during the time he so worked, ,but nothing more; and that the sum of one hundred and thirty (\$130.00) dollars is now due for said labor so performed after deducting all just credits and off-sets;

That Hugh Ferry claims, and it is his intention to hold, a lien for the amount so due, upon the said Soo Quartz Mining Claim, the mine and lode thereon, and therein situated, together with the improvements and machinery situated thereon or connected therewith, also the leasehold interest of W. L. Spaulding in and to the Soo Mining Claim above described which lease is recorded at page 498, Vol. 5, of Leases in the office of the recorder for the Fairbranks Precinct, Fourth Division, Alaska, to which reference is made for a more complete description of said leasehold interest.

That the Soo Quartz Mining Claim is described as follows, to-wit: Commencing at the point of discovery on said claim; thence running in a southerly direction 300 feet to a post marked Southeast corner, thence in a westerly direction 1500 feet to a post marked Southwest Corner; thence in a northerly direction 300 feet to a post marked Center End; thence in a northerly direction 300 feet to a post



marked Northwest Corner; thence in an easterly direction 1500 feet to a post marked northeast Corner; thence in a southerly direction 300 feet to the place of beginning. Said claim being 1500 feet in length by 600 feet in width, and is situated about one-half mile northwest of Pedro Dome on the right limit of Dome creek opposite creek claim Number 9, and is bounded on the east by the Waterbury Quartz Mining Claim, all situate in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska; and that the location certificate of said Soo Quartz Mining Claim is recorded at page 73 Volume 12 of locations in the office of the Recorder of the Fairbanks Precinct, Alaska, to which reference is hereby made.

That the improvements and machinery upon which claimant also claims a lien, is a certain boiler house with boiler, hoist, five horse power engine and three stamp mill situated at the mouth of the shaft of the mine upon said Soo Quartz Mining Claim; also a certain two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situated at the head of Dome Creek opposite the Soo Quartz Mining Claim and about one-quarter of a mile distant therefrom, together with the building in which said stamp mill is situated.

That the Reliance Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, of which Raymond Brumbaugh is president, L. B. Clough vice president

and R. C. Erchinger secretary, are the owners or reputed owners of the said Soo Quartz Mining Claim and three stamp mill situate thereon, and the labor performed by claimant herein and above mentioned was performed with a knowledge of the said Reliance Mining Company, a corporation, and the officers thereof.

And the said W. L. Spaulding is the owner or reputed owner of all the machinery, stamp mill and equipment, and the building enclosing the same, above described, except the said three stamp Mill.

That the said W. L. Spaulding and Raymond Brumbaugh, reputed to be copartners in the mining of said property, and by whom the said claimant herein was employed, are the lessees or reputed lessees of said mining property.

That thirty days has not elapsed since the last item of labor above mentioned was performed.

HUGH FERRY,

Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

Hugh Ferry being first duly sworn, on oath, says: That he is the lien claimant mentioned in the foregoing claim of lien; and that he has read said claim of lien, knows the contents thereof, and that the same is true; and that said claim of lien contains, among other things, a correct statement of the claimant's demand after deducting all just credits and set-offs.

HUGH FERRY.

Subscribed and sworn to before me this 7th day of November A. D. 1913.

(SEAL)

T. A. MARQUAM.

A Notary Public for District of Alaska.

My commission will expire July 6, 1914.

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“EXHIBIT L 1.”

CLAIM OF LIEN.

KNOWN ALL MEN BY THESE PRESENTS:

That Hugh Ferry of Fairbanks, Alaska, has, by virtue of a contract theretofore made with W. L. Spaulding and Raymond Brumbaugh, mining Co-partners, performed work and as hereinafter set forth as a miner in running tunnels and stopes and in the working and development of the Soo Quartz Mining Claim and the mine situate thereon; and said mining claim and mine together with the improvements thereon being at the time the property of the Reliance Mining Company, a corporation organized and existing under the laws of Nevada, and doing business in Alaska;

Said Soo Quartz Mining Claim is situated about one-half mile Northwest of Pedro Dome on the right limit of Dome creek, opposite creek placed mining claim Number 9; said claim being 1500 feet long and 600 feet wide, the location certificate of which is recorded at page 73, Vol. 12 of Locations in the office of the Recorder for the Fairbanks Precinct, Fourth Division, Territory of Alaska, to which reference is hereby made for a complete description of



said claim.

That between the 9th day of October, 1913, inclusive, and the 9th day of November, 1913, claimant performed as aforesaid 28 days labor.

That the contract and reasonable price of wages for said work and labor so performed was five dollars per day, besides board.

That for said work there was due claimant in wages \$140.00 dollars, on account thereof claimant received \$56.81 and no more; That there are no other credits or set-offs against the same, and there is now due claimant the sum of \$83.19.

That the said W. L. Spaulding was at the time mentioned herein the owner or reputed owner of a ten year leasehold interest in the said Soo Quartz Mining Claim beginning June 9th, 1913, which is recorded, November, 5th, 1913, at page 498, Vol. 5 of Leases of the aforesaid records; and he is also the owner, or reputed owner, of a two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate opposite to, and about one-quarter mile distant from Soo Quartz Mining Claim together with buildings inclosing same.

That claimant herein claims a lien for the amounts due as aforesaid upon the said Soo Quartz Mining Claim and the mining machinery, buildings, stamp and improvements therein and thereon situated, all of which the Reliance Mining Company are the owners or reputed owners. He also claims a lien therefore, upon the leasehold interest in said

Soo Quartz Mining Claim, owned by the said W. L. Spaulding as aforesaid; also two stamp of the said W. L. Spaulding above described and its equipment and buildings inclosing the same.

That the labor performed by claimant was performed and done with the knowledge of the said Reliance Mining Company and its officers.

That since last item of labor above mentioned was performed thirty days has not yet elapsed.

HUGH FERRY,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

Hugh Ferry, being first duly sworn, on oath, says: That he is the lien claimant herein; that he has read the foregoing claim of lien, knows the contents thereof, and that the same is true; That said claim of lien contains a correct statement of claimant's demand after deducting all just credits and set-offs.

HUGH FERRY.

Subscribed and sworn to before me this 18 day of November, 1913.

(SEAL)

T. A. MARQUAM,  
Notary Public in and for Alaska.  
My commission expires July 6, 1914.

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"EXHIBIT M."

CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS:  
That Louis Behl of the Fairbanks Recording Pre-

cinct, Fourth Division, Territory of Alaska, has, by virtue of an oral contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, both of the same place, who are conducting mining operations on the Soo Quartz Mining Claim hereinafter described, and who are reputed to be copartners conducting the said operations under the name of the SOO MINING COMPANY, performed labor as a miner in running tunnels and stopes and in the working and development of that certain quartz mining claim known as the Soo Quartz Mining Claim, and the mine thereon and therein situated, which mining claim is hereinafter more particularly described;

That the contract and reasonable price of such labor so performed was the sum of five dollars per day, and board, and the said W. L. Spaulding and Raymond Brumbaugh agreed to pay claimant herein five dollars per day and board for such labor;

That between August Third, 1913, and the 1st day of November, 1913, inclusive, under the terms of said contract, said Louis Behl performed seventy-three (73) days labor in and upon said mining claim in the working and development thereof as aforesaid;

That for the work so performed, claimant received his board during the time he so worked, but nothing more except the sum of \$35.25 and that the sum of Three hundred twenty-nine and 75-100 (\$329.75) dollars is now due for said labor so performed after deducting all just credits and off-sets;



That Louis Behl claims, and it is his intention to hold, a lien for the amount so due, upon the said Soo Quartz Mining Claim, the mine and lode thereon and therein situated, together with the improvements and machinery situated thereon or connected therewith, also the leasehold interest of W. L. Spaulding in and to the Soo Mining Claim above described which lease is recorded at page 498 Vol. 5, of Leases in the office of the recorder for the Fairbanks Precinct, Fourth Division, Alaska, to which reference is made for a more complete description of said leasehold interest.

That the Soo Quartz Mining Claim is described as follows, to-wit: Commencing at the point of discovery on said claim; thence running in a southerly direction 300 feet to a post marked Southeast corner; thence in a westerly direction 1500 feet to a post marked Southwest Corner; thence in a northerly direction 300 feet to a post marked Center End; thence in a northerly direction 300 feet to a post marked Northwest Corner; thence in an easterly direction 1500 feet to a post marked northeast Corner; thence in a southerly direction 300 feet to the place of beginning. Said claim being 1500 feet in length by 600 feet in width, and is situated about one-half mile northwest of Pedro Dome on the right limit of Dome creek opposite creek claim Number 9, and is bounded on the east by the Waterbury Quartz Mining Claim; all situate in the Fairbanks Recording Precinct, Fourth Judicial Division,

Territory of Alaska; that the location certificate of said Soo Quartz Mining Claim is recorded at page 73 Volume 12 of Locations in the office of the Recorder of the Fairbanks Precinct, Alaska, to which reference is hereby made.

That the improvements and machinery upon which claimant also claims a lien, is a certain boiler, hoist, five horse power engine and three stamp mill situated at the mouth of shaft of the mine upon said Soo Quartz Mining Claim; also a certain two stamp mill and equipment formerly known as the Sutherland Stamp Mill, situate at the head of Dome Creek opposite the Soo Quartz Mining Claim and about one-quarter of a mile distant therefrom, together with the building in which said stamp mill is situated.

That the Reliance Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, of which Raymond Brumbaugh is president, L. B. Clough vice president and R. C. Erchinger secretary, are the owners or reputed owners of the said Soo Quartz Mining Claim and three stamp mill situate thereon; and the labor performed by claimant herein and above mentioned was performed with a knowledge of the said Reliance Mining Company, a corporation, and the officers thereof.

And the said W. L. Spaulding is the owner or reputed owner of all the machinery, stamp mill and equipment, and the building enclosing the same, above described, except the said three stamp mill.

That the said W. L. Spaulding and Raymond Brumbaugh, reptued to be copartners in the mining of said property, and by whom the said claimant herein was employed, are the lessees or reputed lessees of said mining property.

That thirty days has not elapsed since the last item of labor above mentioned was performed.

LOUIS BEHL,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

Louis Behl being first duly sworn, on oath, says: That he is the lien claimant mentioned in the foregoing claim of lien; that he has read said claim of line, knows the contents thereof, and that the same is true; and that said claim of lien contains, among other, a correct statement of the claimant's demand, after deducting all just credits and set-offs.

LOUIS BEHL.

Subscribed and sworn to before me this 29th day of November, A. D. 1913.

(SEAL)

T. A. MARQUAM,

A Notary Public for District of Alaska.

My commission expires July 6, 1914.

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“EXHIBIT N.”

CLAIM OF LIEN.

KNOWN ALL MEN BY THESE PRESENTS:  
That Wm. Ahlmarkr, of the Fairbranks Recording Precinct, Fourth Division, Territory of Alaska, has,



by virtue of an oral contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, both of the same palce, who are conducting mining operations on the Soo Quartz Mining Claim hereinafter described, and who are reputed to be copartners conducting said operations under the name of the SOO MINING COMPANY, performed labor in delivering wood upon the Soo Mining Claim and performing work upon said mining claim, all of which was in aid of the working and development of the said mining claim and the mine and lode thereon situated, said mining claim being that certain quartz mining claim known as the Soo Quartz Mining Claim and the mine thereon and therein situated, which mining claim is hereinafter more particularly described.

That the contract and reasonable pircce of such labor so performed was the sum of five dollars a day and board for himself and five dollars per day and board for team, and the said W. L. Spaulding and Raymond Brumbaugh agreed to pay calimant herein five dollars a day and board for such labor, and five dollars per day and board for said team.

That between July 12th, 1913, and the 8th day of October, 1913, inclusive, under the terms of said contract said Wm. Ahlmark performed  $76\frac{1}{2}$  days labor in and upon and around said mining claim in the working and development thereof as aforesaid, and  $67\frac{1}{2}$  days for team.

That for the work so performed, claimant received his, and his teams board during the time he so

worked, but nothing more, save and except the sum of \$112.00 for team hire, and that the sum of \$382.50 dollars is now due for said labor so performed, and \$225.00 for hire of team after deducting all just credits and off-sets.

That Wm. Ahlmark claims, and it is his intention to hold a lien for the amount so due upon the said Soo Quartz Mining Claim, the mine and lode thereon and therein situated, together with improvements and machinery situated thereon, or connected therewith, and hereinafter described, also the leasehold interest held by W. L. Spaulding in and to the Soo Quartz Mining Claim above mentioned the lease of which is recorded at page 498, Vol. 5 of Leases in the office of the recorder for the Fairbanks Precinct, Fourth Division, Aalska, and to which reference is hereby made for a more compelte description of said leasehold interest.

That the Soo Quartz Mining Claim is described as follows, to-wit: Commencing at the point of discovery on said claim; thence running in a southerly direction 300 feet to a post marked southeast corner; thence in a westerly direction 1500 feet to a post marked southwest corner; thence in a northerly direction 300 feet to a post marked Center End; thence in a northerly direction 300 feet to a post marked northwest corner; thence in an easterly direction 1500 feet to a post marked northeast corner; thence in a southerly direction 300 feet to the place of beginning; said claim being 1500 feet in

length by 300 feet in width, and is situate about one-half mile northwest of Pedro Dome on the right limit of Dome Creek opposite creek claim Number 9, and is bounded on the east by the Waterbury Quartz Mining Claim; all situate in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska; That the location certificate of said Soo Quartz Mining Claim is recorded at page 73, Volume 12 of Locations, in the office of the Recorder of the Fairbanks Precinct, Alaska, to which reference is hereby made.

That the improvements and machinery upon which claimant also claims a lien is a certain boiler house with boiler and hoist, five horse-power engine and three stamp mill situate at the mouth of the shaft of the mine upon said Soo Quartz Mining Claim, also a certain two stamp mill and equipment, formerly known as the Sutherland Stamp Mill, situate at the head of Dome Creek opposite the Soo Quartz Mining Claim and about a quarter of a mile distant therefrom; together with the buildings in which said stamp mill is situated.

That the Reliance Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, of which Raymond Brumbaugh is president, L. B. Clough vice president and R. C. Erchinger secretary, are the owners or reputed owners of the said Soo Quartz Mining Claim, and the three stamp mill situate thereon. And the labor performed by claimant herein and above men-



tioned was furnished with a knowledge of the said Reliance Mining Company, a corporation, and the officers thereof.

And the said W. L. Spaulding is the owner or reputed owner of all the machinery, stamp mill and equipment, and the buildings inclosing the same, above described, except the said three stamp mill.

That the said W. L. Spaulding and Raymond Brumbaugh, reputed to be copartners in the mining of said property, and by whom the lien complaint was employed, are the lessees or reputed lessees of said mining property.

That thirty days has not elapsed since the last item of labor above mentioned was performed.

WM. AHLMARK,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

Wm. Ahlmark, being first duly sworn, on oath, says: That he is the lien claimant mentioned in the foregoing claim of lien; that he has read said claim of lien, knows the contents thereof, and that the same is true; and that said claim of lien contains among other thing a correct statemnet of claimant's demand, after deducting all just credits and set-offs.

WM. AHLMARK.

Subscribed and sworn to before me this 7th day of November, 1913.

(SEAL)

T. A. MARQUAM.

Notary Public in and for Alaska.

My commission expires July 6, 1914.

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‘EXHIBIT N 1.’

## CLAIM OF LIEN.

KNOW ALL MEN BY THESE PRESENTS: That Wm. Ahlmark of Fairbanks, Alaska, has, by virtue of a contract heretofore made with W. L. Spaulding and Raymond Brumbaugh, mining co-partners, performed work and labor as hereinafter set forth as a teamster in hauling wood and supplies and also hired one team to Spaulding and Brumbaugh thereby aiding in the work of running tunnels and stopes and in the working and development of the Soo Quartz Mining Claim and the mine situate thereon; and said mining claim and mine together with the improvements thereon being at the time the property of the Reliance Mining Company, a corporation organized and existing under the laws of Nevada, and doing business in Alaska;

Said Soo Quartz Mining claim is situated about one-half mile Northwest of Pedro Dome on the right limit of Dome creek, opposite creek placer mining claim Number 9; said claim being 1500 feet long and 600 feet wide, the location certificate of which is recorded at page 73, Vol. 12 of Locations in the office of the Recorder for the Fairbranks Precinct, Fourth Division, Territory of Alaska, to which refer-

ence is hereby made for a complete description of said claim.

That between the 9th day of October, 1913, inclusive, and the 9th day of November, 1913, claimant performed as aforesaid 25 days labor and hired to the said Spaulding and Brumbaugh one team of horses which were used on said claim for a period of 26 days.

That the contract and reasonable price of wages for said work and labor so performed was five dollars per day, besides board and the reasonable and contract price for the hire of said team was \$5.00 per day and their board.

That for said work there was due claimant in wages \$125.00 dollars, on account thereof claimant received nothing; That there are no other credits or set-offs against the same, and there is now due claimant the sum of \$125.00. That for the hire of said team there was due claimant \$130.00 of which \$115.00 has been paid and there is now due therefore \$15.00.

That said W. L. Spaulding was at the time mentioned herein the owner or reputed owner of a ten year leasehold interest in the said Soo Quartz Mining Claim beginning June 9th, 1913, which is recorded, November, 5th, 1913, at page 498, Vol 5 of Leases of the aforesaid records; and he is also the owner, or reputed owner, of a two stamp mill and equipment formerly known as the Sutherland Stamp



Mill, situate opposite to, and about one-quarter mile distant from Soo Quartz Mining Claim together with buildings inclosing same.

That claimant herein claims a lien for the amounts due as aforesaid upon the said Soo Quartz Mining Claim and the mining machinery, buildings, stamp mill and improvements therein and thereon situated, all of which the Reliance Mining Company are the owners or reputed owners. He also claim a lien therefore, upon the leasehold interest in said Soo Quartz Mining Claim, owned by the said W. L. Spaulding as aforesaid; also two stamp mill of the said W. L. Spaulding above described and its equipment and buildings inclosing the same.

That the labor performed by claimant and the hiring of said team was performed and done with the knowledge of the said Reliance Mining Company and its officers.

That since last item of labor above mentioned was performed thirty days has not yet elapsed nor has a period of 30 days expired since the last day of the hiring of said team.

WM. AHLMARK,,  
Lien Claimant.

United States of America,  
Territory of Alaska,—ss:

Wm. Ahlmark, being first duly sworn, on oath, says: That he is the lien claimant herein; that he has read the foregoing claim of lien, knows the contents thereof, and that the same is true: That said

claim of lien contains a correct statement of claimant's demand after deducting all just credits and set-offs.

WM. AHLMARK.

Subscribed and sworn to before me this 17 day of November, 1913.

'(SEAL)

T. A. MARQUAM,

Notary Public for Alaska.

My commission expires July 6, 1914.

United States,

Territory of Alaska,—ss:

S. A. Martin, being first duly sworn, upon oath, deposes and says: That he is the plaintiff in the within entitled action; that he has read the foregoing complaint, knows the contents thereof, and that the same is true, as he verily believes.

S. A. MARTIN.

Subscribed and sworn to before me this 8th day of January, 1914.

(SEAL)

T. A. MARQUAM,

Notary Public in and for the Territory of Alaska.

My commission expires July 6, 1914.

(Indorsed: Filed in the District Court, Territory of Alaska, 4th Div., Jan. 23, 1914, Angus McBride, Clerk, by P. R. Wagner, Deputy.

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[Title of Court and Cause.]

**Admission of Service.**

Service of Summons and Complaint in the foregoing action is hereby admitted this 23rd day of Janu-

ary, A. D. 1914, in behalf of W. L. Spaulding, Raymond Brumbaugh, and Reliance Mining Company, and service by the United States Marshal is hereby waived, and pleading in behalf of said defendants will be filed in said cause within thirty (30) days from the date hereof.

Fairbanks, Alaska, January 23, A. D. 1914.

M'GOWAN & CLARK and J. K. BROWN,  
Attorneys for Defendants Spaulding, Brumbaugh, and Reliance Mining Company.

Due service hereof admitted this 26th day of January, 1914 T. A. Marquam, Attorney for Plaintiff.

Endorsed: Filed in the District Court territory of Alaska, 4th Division, Jan 26 1914 Angu McBride, Clerk.

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[Title of Court and Cause.]

**Motion to Strike.**

Comes now the defendant W. L. Spaulding, appearing separately, and moves this court to strike from the complaint herein, the following parts and portions, to-wit:

**I.**

(a) Paragraph VI of the first cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the first cause of action, upon the ground that the matters and things therein



contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the first cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant.

(d) Plaintiff's Exhibit A, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

## II.

(a) Paragraph VI of the second cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the second cause of action, upon the ground that the matters and things therein contained are sham, frivolous and irrelevant and redundant;

(c) Paragraph IX of the second cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit A1, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

## III.

(a) Paragraph VI of the third cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant.

(b) Paragraph VIII of the third cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the third cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit B, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

## IV.

(a) Paragraph VI of the fourth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the fourth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the fourth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and re-

dundant;

(d) Plaintiff's Exhibit B 1, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

V.

(a) Paragraph VI of the fifth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the fifth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the fifth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit C, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

VI.

(a) Paragraph VI of the sixth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the sixth cause of action,



upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the sixth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit C 1, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

## VII.

(a) Paragraph VI of the seventh cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the seventh cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the seventh cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit D, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

### VIII.

(a) Paragraph VI of the eighth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the eighth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the eighth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit D 1, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

### IX.

(a) Paragraph VI of the ninth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the ninth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the ninth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and re-

dundant;

(d) Plaintiff's Exhibit E, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

### X.

(a) Paragraph VI of the tenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the tenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrevelant and redundant;

(c) Paragraph IX of the tenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit E 1, upon the ground that same, which is a purorted notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

### XI.

(a) Paragraph VI of the eleventh cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the eleventh cause of action,



upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the eleventh cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and re-  
durant;

(d) Plaintiff's Exhibit F, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

## XII.

(a) Paragraph VI of the twelfth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the twelfth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the twelfth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit F 1, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

### XIII.

(a) Paragraph VI of the thirteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant.

(b) Paragraph VIII of the thirteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant.

(c) Paragraph IX of the thirteenth cause of action, upon the grounds that the matter and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit G, upon the ground that same which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

### XIV.

(a) Paragraph VI of the fourteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the fourteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous irrelevant and redundant;

(c) Paragraph IX of the fourteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and

redundant;

(d) Plaintiff's Exhibit G 1, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

### XV.

(a) Paragraph VI of the fourteenth cause of action (page 36) upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the fourteenth cause of action (page 36) upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of said fourteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit H, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

### XVI.

(a) Paragraph VI of the fifteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the fifteen cause of ac-



tion, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the fifteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit H 1, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

## XVII.

(a) Paragraph VI of the sixteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the sixteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the sixteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit I, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

XVIII.

(a) Paragraph VI of the seventeenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the seventeenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the seventeenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit I 1, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

XIX.

(a) Paragraph VI of the eighteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

<sup>1</sup>(b) Paragraph VIII of the eighteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

<sup>1</sup>(c) Paragraph IX of the eighteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and

redundant;

(d) Plaintiff's Exhibit J, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

## XX.

(a) Paragraph VI of the nineteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the nineteenth cause of action, upon the ground that the matters and things contained therein are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the nineteenth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit J 1, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

## XXI.

(a) Paragraph VI of the twentieth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant.

(b) Paragraph VIII of the twentieth cause of ac-



tion, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

'(c) Paragraph IX of the twentieth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit K, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

## XXII.

(a) Paragraph VI of the twenty-first cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the twenty-first cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the twenty-first cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit K 1, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

## XXIII.

(a) Paragraph VI of the twenty-second cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the twenty-second cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the twenty-second cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit L, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

## XXIV.

(a) Paragraph VI of the twenty-third cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the twenty-third cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the twenty-third cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and

redundant;

(d) Plaintiff's Exhibit L 1, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

### XXV.

(a) Paragraph VI of the twenty-fourth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the ~~twenty-third~~ <sup>fourth</sup> cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the twenty-fourth cause of action, upon the ground that the matters and things contained therein are sham, frivolous, irrelevant and redundant;

(d) Plaintiff's Exhibit M, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

### XXVI.

(a) Paragraph VI of the twenty-fifth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the twenty-fifth cause of



action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the twenty-fifth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

'(d) Plaintiff's Exhibit N, upon the ground that same which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

## XXVII.

(a) Paragraph VI of the twenty-sixth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(b) Paragraph VIII of the twenty-sixth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant;

(c) Paragraph IX of the twenty-sixth cause of action, upon the ground that the matters and things therein contained are sham, frivolous, irrevelant and redundant;

(d) Plaintiff's Exhibit N 1, upon the ground that same, which is a purported notice of lien, shows on its face that it contains lienable and non-lienable items so intermingled and commingled that they cannot be segregated.

## XXVIII.

From the prayer of plaintiff's complaint, the following words in paragraph I thereof, commencing in the second line: "for the sum of two hundred fifty-two and 25-100 (\$252.25) dollars for expenses for preparing and filing said liens, and for attorney's fees in the sum of two thousand twenty-five' (\$2025.00) dollars; all aggregating the sum of seven thousand four hundred forty-two and .08-100 (\$7442.08) dollars, together with interest thereon until paid," upon the ground that the matters and things therein contained are sham, frivolous, irrelevant and redundant.

JOHN K. BROWN and  
McGOWAN & CLARK,  
Attorneys for Said Defendant.

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[Title of Court and Cause.]

**Motion to Make More Definite and Certain.**

Comes now the defendant W. L. Spaulding, above named appearing separately, and moves this court to require plaintiff to make his complaint more definite and certain, in the following particulars, to-wit:

By setting forth in paragraph V of plaintiff's first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fourteenth, (2), fifteenth, sixteenth, seventeenth eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, and twenty-sixth causes of action, and each of them, what

portion of the labor described therein was performed in running tunnels, what portion in opening stopes, what portion in working and extracting the ore from said mine and what portion in developing and improving said mine and what portion in milling the ore taken therefrom and in what way said labor so alleged to have been performed was of the value to said mining property alleged therein.

McGOWAN & CLARK,

JOHN K. BROWN,

Attorneys for Said Deft.

(Indorsed:) Filed in the District Court, Territory of Alaska, 4th Div., Feb. 27, 1914. Angus McBride, Clerk.

Court Journal No. 12, page 877:

R. S. Martin, Plaintiff, vs. W. L. Spaulding et al., Defendants.—Order denying motions.—Now on this day came on for hearing; 1st, motion of defendant W. L. Spaulding to strike and make more definite and certain; 2nd, motion of defendant W. L. Spaulding to strike and make more definite and certain; and 3rd, motion of defendant Reliance Mining Company to strike and make more definite and certain; T. A. Marquam appearing for and in behalf of plaintiff, John A. Clark of McGowan & Clark, appearing in behalf of defendants. After argument thereon by the respective attorneys and the Court being duly and fully advised in the premises, denies said motions and each of them, to which ruling the



defendants except and exception is allowed.

The defendants were given five (5) days within which to plead further.

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[Title of Court and Cause.]

**Stipulation Relative to Matters to Be Inserted in  
Record On Appeal.**

It is hereby stipulated by and between the attorneys for appellants and appellee that the separate motions to strike and the motions to make more definite and certain of Raymond Brumbaugh, W. L. Spaulding, and Reliance Mining Company are identical so far as the wording thereof is concerned, and that, in the printing of said record, but one of said motions need be inserted in said record, and that, in lieu of the insertion of the other two motions, this stipulation shall be inserted therein.

Dated at Fairbanks, Alaska, this 30th day of November, 1915.

McGOWAN & CLARK,  
JOHN K. BROWN,  
Attorneys for Appellants.  
MORTON E. STEVENS,  
Attorneys for Appellee.

(Indorsed: Filed in the District Court for the Territory of Alaska, 4th Div. Dec 8 1915 J. E. Clark By Sidney Stewart Deputy)

[Title of Court and Cause.]

**Demurrer of Defendant Reliance Mining Company  
to Complaint.**

The above named defendant, Reliance Mining Company, hereby demurs to the first cause of action set forth in the complaint herein, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said first cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

II.

Said defendant demurs to the second cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said second cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

III.

Said defendant demurs to the third cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said third cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

IV.

Said defendant demurs to the fourth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said fourth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

V.

Said defendant demurs to the fifth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said fifth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

VI.

Said defendant demurs to the sixth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said sixth cause of action:

2. That the same does not state facts sufficient to constitute a cause of action.

VII.

Said defendant demurs to the seventh cause of action set forth in said complaint, upon the following



grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said seventh cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

#### VIII.

Said defendant demurs to the eighth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said eighth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

#### IX.

Said defendant demurs to the ninth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court had no jurisdiction of the subject of said ninth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

#### X.

Said defendant demurs to the tenth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said tenth

cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

XI.

Said defendant demurs to the eleventh cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said eleventh cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

XII.

Said defendant demurs to the twelfth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said twelfth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

XIII.

Said defendant demurs to the thirteenth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said thirteenth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

## XIV.

Said defendant demurs to the fourteenth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said fourteenth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

## XV.

Said defendant demurs to the fourteenth cause of action set forth in said complaint '(page 36), upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said fourteenth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

## XVI.

Said defendant demurs to the fifteenth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said fifteenth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

## XVII.

Said defendant demurs to the sixteenth cause of action set forth in said complaint, upon the follow-



ing grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said sixteenth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

### XVIII.

Said defendant demurs to the seventeenth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said seventeenth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

### XIX.

Said defendant demurs to the eighteenth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said eighteenth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

### XX.

Said defendant demurs to the nineteenth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said

nineteenth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

### XXI.

Said defendant demurs to the twentieth cause of action set forth in said complaint, upon the grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said twentieth cause of action.

2. That the same does not state facts sufficient to constitute a cause of action.

### XXII.

Said defendant demurs to the twenty-first cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said twenty-first cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

### XXIII.

Said defendant demurs to the twenty-second cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said twenty-second cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

XXIV.

Said defendant demurs to the twenty-third cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said twenty-third cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

XXV.

Said defendant demurs to the twenty-fourth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said twenty-fourth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

XXVI.

Said defendant demurs to the twenty-fifth cause of action set forth in said complaint, upon the following grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said twenty-fifth cause of action;

2. That the same does not state facts sufficient to constitute a cause of action.

XXVII.

Said defendant demurs to the twenty-sixth cause of action set forth in said complaint, upon the follow-



ing grounds, to-wit:

1. That it appears from the face thereof that the court has no jurisdiction of the subject of said twenty-sixth cause of action;
2. That the same does not state facts sufficient to constitute a cause of action.

McGOWAN & CLARK,

JOHN K. BROWN,

Attorneys for said Defendant.

Due service of the within demurrer and receipt of a copy thereof are hereby acknowledged this 19th day of March 1914.

T. A. MARQUAM,

Attorney for Plaintiff.

(Indorsed: Filed in the District Court Territory of Alaska 4th Div. Mar 19 1914 Angus McBride Clerk.)

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[Title of Court and Cause.]

**Stipulation Relative to Matters to Be Inserted in  
Record On Appeal.**

It is stipulated by and between the attorneys for appellants and appellee that the separate demurrers filed by the defendants Raymond Brumbaugh, W. L. Spaulding, and Reliance Mining Company are identical, and that but one of said demurrers need be printed in the record, and in lieu of inserting the demurrers filed by the other two defendants, this stipulation may be inserted in said record.

Dated at Fairbanks, Alaska, this 30th day of

November 1915.

McGOWAN & CLARK,  
JOHN K. BROWN,  
Attorneys for Appellants.  
MORTON E. STEVENS,  
Attorneys for Appellee.

(Indorsed: Filed in the District Court for the Territory of Alaska, 4th Div. Dec. 8 1915 J. E. Clark Clerk By Sidney Stewart Deputy)

Court Journal No. 12, p. 905:

1995 S. A. Martin, Plaintiff, vs. W. L. Spaulding et al.—Order overruling demurrers.—Now on this day the demurrers of defendants to plaintiff's complaint herein having been previously heard and submitted to the Court for its decision, T. A. Marquam in behalf of plaintiff and John A. Clark of McGowan & Clark and John K. Brown in behalf of defendants being present in open Court, and the Court being duly and fully advised in the premises, it is ordered that said demurrers be and they are hereby overruled and defendants are given five (5) days within which to file their answer herein.

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[Title of Court and Cause.]

**Answer of Reliance Mining Company.**

The above named defendant, Reliance Mining Company, for its answer to the complaint of the plaintiff,

I.

Denies each and every allegation contained in

paragraph I of each and every separate cause of action contained and set forth in plaintiff's complaint herein.

II.

Denies each and very allegation contained in paragraph III of each and every separate cause of action contained and set forth in plaintiff's complaint herein.

III.

Denies each and every allegation contained in paragraph IV of each and every separate cause of action contained and set forth in plaintiff's complaint herein.

IV.

Denies each and every allegation contained in paragraph V of each and every separate cause of action contained and set forth in plaintiff's complaint herein.

V.

Denies each and every allegation contained in paragraph VII of each and every separate cause of action contained and set forth in plaintiff's complaint herein.

VI.

Denies each and every allegation contained in paragraph IX of each and every separate cause of action contained and set forth in plaintiff's complaint herein.

VII.

Denies any knowledge or information sufficient



to form a belief as to each and every allegation contained and set forth in plaintiff's complaint herein.

VIII.

Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph VIII of each and every separate cause of action contained and set forth in plaintiff's complaint herein.

IX.

Denies each and every allegation contained in paragraph X of each and every separate cause of action contained and set forth in plaintiff's complaint herein, excepting the first and second causes of action therein contained and set forth.

And the said defendant, for a further and affirmative defense to plaintiff's complaint herein, alleges:

I.

That at all the times mentioned in plaintiff's complaint the said defendant, the Reliance Mining Company, was and now is a corporation organized and existing under and by virtue of the laws of the State of Nevada and was and is the owner of the Soo Quartz Mining claim mentioned and described in plaintiff's complaint herein.

II.

That prior to the commencement of any of the work alleged in said complaint, or in any of the causes of action therein, to have been performed either by the said plaintiff in this action, or any of

his assignors, as set forth in the different causes of action contained in said complaint, this defendant caused to be posted upon said SOO Quartz Mining Claim, at the times, in the places and in the manner required by law, notices in writing, whereby this defendant gave notice to any and all persons that it would not be responsible for any debts, contracted or incurred by any lessees or laymen working or operating said SOO Quartz Mining Claim, under any lease thereof, or otherwise, and whether such debt should be for labor performed, material furnished, or for any other cause; and that any and all persons performing labor or furnishing material for the development, operation or working of said SOO Quartz Mining Claim should look only to the persons by whom they were employed, respectively, to perform such labor or furnish such material, for the payment therefor.

WHEREFORE said defendant demands judgment that the plaintiff take nothing by his said action and that it have judgment against plaintiff for its costs and disbursements incurred herein.

McGOWAN & CLARK,

JOHN K. BROWN,

Attorneys for Said Defendant.

United States of America,

Territory of Alaska,—ss:

RAYMOND BRUMBAUGH, being first duly sworn, on oath deposes and says that he is the President of the Reliance Mining Company, the defendant

cororation making the foregoing answer, and makes this verification in its behalf as such officer; that he has read the foregoing answer, knows the contents thereof, and the same is true as he verily believes.

RAYMOND BRUMBAUGH.

Subscribed and sworn to before me this 5th day of May, 1914.

(SEAL) ANGUS McBRIDE,  
Clerk District Court, for the District of Alaska,  
Fourth Division.

Due service of the within answer and receipt of a copy thereof are hereby acknowledged this 24th day of April 1914, and it is hereby agreed that said answer may stand as a good and sufficient answer in form to each and every cause of action contained an dset forth in the complaint herein, and verification is hereby waived until Raymond Brumbaugh arrives in town.

T. A. MARQUAM,  
Attorney for Plaintiff.

(Indorsed: Filed in the District Court Territory of Alaska 4th Div. Apr 25 1914 Angus McBride Clerk.'')

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[Title of Court and Cause.]

**Answer of W. L. Spaulding and Raymond Brumbaugh**

The above named defendants' W. L. Spaulding and Raymond Brumbaugh, sued herein as mining co-partners conducting mining operations under the name of Soo Mining Company, and W. L. Spaulding,



individually, for their answer to the complaint of the plaintiff,

I.

Deny each and every allegation contained in paragraph I of each and every separate cause of action contained and set forth in plaintiff's complaint herein.

II.

Deny each and every allegation contained in paragraph III of each and every separate cause of action contained and set forth in plaintiff's complaint herein.

III.

Deny each and every allegation contained in paragraph IV of each and every separate cause of action contained and set forth in plaintiff's complaint herein.

IV.

Deny each and every allegation contained in paragraph V of each and every separate cause of action contained and set forth in plaintiff's complaint herein.

V.

Deny each and every allegation contained in paragraph VII of each and every separate cause of action contained and set forth in plaintiff's complaint herein.

VI.

Deny each and every allegation contained in paragraph IX of each and every separate cause of action contained and set forth in plaintiff's complaint herein.

VII.

Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph VI of each and every separate

cause of action contained and set forth in plaintiff's complaint herein.

VIII.

Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph VIII of each and every separate cause of action contained and set forth in plaintiff's complaint herein.

IX.

Deny each and every allegation contained in paragraph X of each and every separate cause of action contained and set forth in plaintiff's complaint herein, excepting the first and second causes of action therein contained and set forth.

WHEREOF said defendants demand judgment that the plaintiff take nothing by his said action and that they have judgment against plaintiff for their costs and disbursements herein.

McGOWAN & CLARK,

JOHN K. BROWN,

Attorneys for said Defendants.

United States of America,

Territory of Alaska,—ss:

RAYMOND BRUMBAUGH, being first duly sworn, on oath deposes and says he is one of the defendants making the foregoing answer, in the above entitled action, and makes this verification in behalf of himself and his codefendant, W. L. Spaulding; that he has read the foregoing answer, knows the contents thereof, and the same is true as he verily

believes.

**RAYMOND BRUMBAUGH.**

Subscribed and sworn to before me this 5th day of May, A. D. 1914.

(SEAL) **ANGUS McBRIDE,**  
Clerk District Court, for the District of Alaska,  
Fourth Division.

Due service of the within answer and receipt of a copy thereof are hereby acknowledged this 24th day of April 1914, and it is hereby agreed that said answer may stand as a good and sufficient answer in form to each and every cause of action contained and set forth on the complaint herein, and verification is waived until the defendant Brumbaugh arrives in town.

**T. A. MARQUAM,**  
Attorney for Plaintiff.

(Indorsed: Filed in the District Court Territory of Alaska 4th Div. Apr 25 1914 Angus McBride Clerk.)

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[Title of Court and Cause.]

**Reply to Answer of Reliance Mining Company.**

Comes now the plaintiff and replying to the answer of the RELIANCE MINING COMPANY filed herein;

'(1) Admits the allegations contained in paragraph (1) of the further and affirmative defense of said answer;

(2) Denies each and every allegation, matter and



thing contained in paragraph (2) of said further and affirmative defense of said answer.

WHEREFORE PLAINTIFF demands judgment as prayed for in his complaint.

T. A. MARQUAM,  
Attorney for Plaintiff.

United States,  
Territory of Alaska,—ss:

S. A. Martin being first duly sworn, upon oath deposes and says: That he is the plaintiff in the within entitled action; that he has read the foregoing reply, knows the contents thereof, and that the same is true, as he verily believes.

S. A. MARTIN.

Subscribed and sworn to before me this 28 day of April, 1914.

(SEAL)

T. A. MARQUAM,  
Notary Public in and for the Territory of Alaska.

My commission expires July 6, 1914.

Service of the foregoing Reply to Answer of Reliance Mining Co. admitted and a true copy thereof received this 28 day of April, 1914.

McGOWAN & CLARK and J. K. BROWN,  
Attorney for Defendant Reliance Mining Co.

(Indorsed: "Filed in the District Court Territory of Alaska 4th Div. Apr. 28 1914 Angus McBride Clerk by P. R. Wagner Deputy.")

[Title of Court and Cause.]

**Bill of Exceptions.**

BE IT REMEMBERED: That this case came on regularly for trial before the Court sitting without a Jury, Honorable Frederic E. Fuller, Judge of said Court, presiding. Morton E. Stevens appeared as attorney for plaintiff, and Messrs McGowan & Clark and John K. Brown, as attorneys for defendants. Trial commenced at 10 a. m., on 11 June 1914, and the following proceedings were had and testimony was taken.

It was admitted by the attorneys for the respective parties that the Reliance Mining Company is a corporation as alleged in the complaint and is the owner of the Soo quartz claim, the claim in dispute.

RAYMOND BRUMBAUGH, a witness for plaintiff, after being duly sworn, testified as follows:

**Direct Examination, by Mr. Stevens:**

My name is Raymond Brumbaugh. I am one of the defendants in this case and am acquainted with the Soo quartz mine at the head of Dome Creek in the Fairbanks Mining and Recording Precinct, Fourth Judicial Division, Territory of Alaska. I am president of the Reliance Mining Comapny, the owner of said claim, and have been such president since the last annual meeting in July. W. L. Spaulding has been operating said claim under a lease, and I was employed as his superintendent and bookkeeper for wages. He commenced work some time in July I think. When he commenced active operations in

July, Mr. Spaulding was working under a lease from the Reliance Mining Company that was in effect at the time. Active operations were not commenced until some time in July. Mining operations were conducted under the name of the Soo Mining Company, which company consisted of W. L. Spaulding during the time I was there. Prior to that time, W. L. Spaulding and John Ronan constituted the Soo Mining Company; prior to that time W. L. Spaulding and John Letterman constituted the Soo Mining Company; and prior to that time W. L. Spaulding, John Letterman, and a man named Clifford constituted the Soo Mining Company. But during the time I was there W. L. Spaulding was the only man who constituted the Soo Mining Company that I know of. That was in July 1913 when he began active operations there.

**Cross-Examination, by Mr. Brown:**

Mr. Spaulding was operating the Soo Mining Company ground, owned by the Reliance Mining Company, under a lease which expired on 1 January 1914.

Q Do you know what the terms of that lease were as to royalties?

A There were no royalties.

Q Was that lease in writing that Spaulding was working under there from the Reliance Mining Company to Spaulding? Was that a written lease after the first of July?

A You mean after the first of last July?



Q Yes. Up to the first of January.

A No; it was a verbal lease.

Q Wasn't it an extension?

A It was a six months' extension of a previous lease. That is what it was.

Q And the extension was a verbal extension?

A It was a verbal extension; yes.

Q From July first up until the first of January. Under what name was the business conducted out there; W. L. Spaulding or the Soo Mining Company?

A The Soo Mining Company.

Q How were checks signed?

A Soo Mining Company. By R. Brumbaugh.

Q Spaulding was the sole owner of the leasehold interest in that?

A He was, through purchase. He purchased the interest of Mr. Letterman.

Q I mean after the first of July when you were out there.

A Yes sir.

Q He was the sole owner concerned in the operation of it?

A Yes sir.

Q And in the profits of it.

A If there had been any.

Mr. Brown: That is all.

**Redirect examination, by Mr. Stevens:**

I know that the lease Mr. Spaulding was operating under was a verbal lease, because there is a resolution on the minutes of the board of directors of the Re-

liance Mining Company, setting forth that fact. That it all on the minutes. I can not say where the books of the Reliance Mining Company are, but the resolution must be on the books. A copy of the resolution is pinned to the original lease, that is, the one I saw extending that. I saw that yesterday. I presume the books are in the custody of the secretary, Mr. St. George of the firm of St. George & Cathcart. I never saw the resolution until yesterday. I don't know when it was pinned there, because at the time it was done I was outside. I know of another lease on the property of the Reliance Mining Company, other than the one I spoke of, existing there now; there is a ten year lease given to Mr. Spaulding, subject to all existing leases; it was given in June or July of last year. It was in writing and I think it was given in June 1913; it is still in existence.

**Re-cross-examination, by Mr. Brown:**

Q That ten year lease is subject to all existing leases,—reads that it is subject to all existing leases?

A Yes sir.

Mr. Stevens: We desire to introduce in evidence Instrument No. 39796, contained in volume 5 of Leases, pages 498, 499, 500, and 501, of the records of Fairbanks Precinct, Alaska, in this Division, and desire to read the same in evidence.

Objection by Mr. Brown for defendants, as incompetent and immaterial, unless it is shown that it is the lease under which the mine was being worked; that it is immaterial for the reason that plaintiff has

alleged in the complaint and in the liens that the ground was being worked by a partnership composed of W. . Spaulding and Raymond Brumbaugh, and the proof so far has failed to show that it was being so worked, and, until they show that the ground was being worked under this lease offered in evidence, the defendants will object to it. Further objection was made that the testimony of the plaintiff shows that Mr. Spaulding, or whoever was working the ground, did not work under said lease.

**Defts' Exception No. 1.**

The lease was admitted, subject to the objection of defendants; to which defendants excepted and exception was allowed.

Said lease is as follows:

This indenture, Made and entered into at Fairbanks, Alaska, on this ninth day of June, A. D. one thousand nine hundred thirteen, By and Between:

Reliance Mining Company, a corporation,  
duly organized and existing under and by  
virtue of the laws of the State of Nevada,  
and hereinafter styled lessor,  
and

W. H. Spaulding, of Fairbanks, Alaska, hereinafter styled lessee,

Witnesseth:

That the lessor, for and in consideration of the rents, royalties, covenants, and agreements hereinafter reserved, and by lessee to be kept and performed, has let, leased, and demised, and by these



presents does let, lease and demise, unto the lessee, all the following described mining ground, situate, lying, and being in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, to-wit:

All the Soo Quartz Mining Claim, situate at the head of Dome creek, subject, however, to all outstanding leases on said mining claim or any portion thereof, whether the same have expired or expire at some time in the future, and this lease is accepted by said lessee expressly subject to the right of all persons now holding leases on said property or any part thereof;

Together with the appurtenances, to have and to hold unto the said lessee for the term of ten years from the date hereof, unless sooner forfeited or terminated by violation of any of the terms and conditions herein contained or by operation of law.

That, in consideration of the rights and privileges hereby granted to him by said lessor, the lessee does hereby covenant and agree to and with the said lessor, as follows, to-wit:

1. That lessee shall enter into possession of said mining ground under this lease as soon as practicable in view of the present outstanding leases on said property, and shall thereafter work and mine said ground and extract the ore therefrom in a proper, workmanlike, and minerlike manner, as economically as possible, always with due regard to the safety, development, and preservation of said premises as a workable mine, and it is expressly stipulated that said

lessee shall sink the present working shaft, now at the lower end of the said Soo claim, to a depth of not less than three hundred feet; that is to say, shall sink the shaft that is now therein and is one hundred feet in depth, for a distance of at least two hundred feet farther.

2. That lessee shall work and mine said premises diligently after entering into possession thereof under the lease, and shall, as quickly as possible, install on said ground the necessary mining plant and machinery to work the same, and during each year of the life of this lease shall perform development work on said claim, either by sinking shafts, or driving tunnels, or by extracting the ore blocked out, and shall work continuously on said ground, save and except that the provision respecting continuous working shall not prevail in the event of the happening of any accident, or the arising of any conditions that can not well be provided against, but, after the removal of said causes for delay, which shall be done as expeditiously as practicable, the provision respecting continuous working shall thereupon be in full force and effect.

3. That lessee shall sufficiently timber said mine at all points where proper, and shall repair all old timbers wherever it may become necessary, all such work to be performed in a good and workmanlike manner, and so as to comply with the requirements of law and the rules and regulations prescribed by the mining inspectors for the Territory of Alaska.



4. That lessor and its agents shall, at all reasonable times, be permitted to enter on or into any and all parts of said leased premises, for the purpose of inspecting the same.

5. That lessee shall not assign this lease in whole or in part, and shall not sub-let the whole or any part of said demised premises, without the written consent of lessor being first had and obtained.

6. That he shall occupy and hold for lessor all cross or parallel lodes, dips, spurs, feeders, crevices, and mineral deposits of any nature and kind that may be discovered in working under this lease or in any of the tunnels run in connection herewith, with privilege to lessee to work the same as an appurtenance of said demised premises during the term of this lease.

7. That lessee shall at all times keep and maintain all shafts, tunnels, and other passages, of said mine, that have not been entirely worked out, thoroughly drained and free of loose rock and other waste material of every kind.

8. That lessee shall notify lessor, or its duly authorized agent, of the time and place of holding all clean-ups deriver from the crushing of ore taken from said premises, and shall, after each and every mill-run, pay and deliver to lessor its proportion of ten per cent, of the gross amount thereof, and shall retain for his own use and compensation, for the working of said ground under these presents, ninety per cent. of the gross amount of the gold and other



precious metals realized from the working aforesaid; and in this connection it is covenanted and agreed by lessee that all ores taken from the aforesaid premises shall be crushed, and the gold and other precious metals extracted therefrom shall be accounted for by the lessee, and shall be divided between lessor and lessee in the proportions hereinabove in this paragraph specified.

9. That said lessor may, if it so desires, have an agent present at each clean-up so held, and after each and every clean-up of any mill through which said ore may be run, said lessee agrees to pay and deliver to lessor ten per cent. of the gross mineral product cleaned up from such mill-run, said division to be made after said mineral products have been re-torted and melted; provided, however, that, if both parties to this agreement agree thereto, lessee may pay in cash the royalties due to lessor at the current market price thereof at the banks in Fairbanks.

10. That lessee shall promptly pay all labor and material men, so as to prevent the filing of any lien or liens on or against the aforesaid demised premises, and shall at all times keep posted, in at least three conspicuous places on said demised premises, a notice that the lessor will not be liable for any labor performed or material furnished for use in the prosecution of mining operations under these presents, which said notice shall be in such form as lessor may prepare and deliver to lessee.

11. That, at the expiration of this lease or its sooner

termination according to the terms thereof, lessee shall deliver to lessor the said premises, with the appurtenances and all improvements, in good order and condition and the mine in all points ready for immediate continued working, without demand or further notice; and it is expressly understood and agreed that all stamp mills, structures, or other improvements, placed on said property or on property adjacent thereto, to be used in the prosecution of mining operations on said ground, shall, at the expiration of this lease or its sooner termination according to the terms hereof, become the property of lessor without any further act whatsoever on the part of lessee; provided, however, that, in the event lessee, after prospecting said ground, does not desire to continue working thereon, but elects within six months from the date hereof to abandon said lease, then any mining machinery, stamp mill, or other structure or improvement placed on said ground between the date of the signing of these presents and the surrender of this lease, may be removed by lessee within thirty days from the time of the surrender and cancellation of this lease.

12. That lessee shall, during each and every year of the life of this lease, perform on the mining claim hereinabove described the necessary annual labor required by law to be done for the holding of claims, and shall, if required by lessor, furnish to lessor affidavits of the performance of said annual labor as prescribed by law.



13. That, in the event of any violation of the covenants and agreements herein contained, the term of this lease shall, at the option of lessor, immediately expire, and the same and the said premises with the appurtenances shall revert to and become thereupon forfeited to lessor, and lessor, or its duly authorized agent, may thereupon enter into possession of said premises and dispossess all persons occupying the same, with or without force, and with or without process of law, and all persons found in possession or occupation thereof may be proceeded against as though guilty of unlawful detainer.

14. That each and all of the covenants and agreements herein contained shall extend to and be binding on the heirs, executors, administrators, successors in interest, and assigns, of the parties hereto, both jointly and severally.

In witness whereof, the parties hereto have hereunto set their hands and seals on the day and year first hereinabove written.

In the presence of: C. Harry Woodward, Wallace Cathcart.

Reliance Mining Co. (SEAL)

by L. B. Clough, Vice-President  
and R. C. Erchinger, Secretary

Wm. L. Spalding (SEAL)

Territory of Alaska,  
Fairbanks Precinct.

This is to certify that on this ninth day of June, A. D. one thousand nine hundred thirteen, before



me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn, personally appeared L. B. Clough and R. C. Erchinger, known to me to be respectively the Vice-President and Secretary of Reliance Mining Company, and the persons who executed the foregoing lease in behalf of said Reliance Mining Company, and acknowledged to me that they signed the same for and in behalf of said Reliance Mining Company, as the free and voluntary act and deed of said Reliance Mining Company; at the same time and place appeared W. H. Spalding, the person mentioned as lessee in the foregoing lease, and to me known to be the individual who executed the foregoing lease as such lessee, and acknowledged to me that he signed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my official seal on the day and year first in this certificate above written.

(SEAL) WALLACE CATHCART,  
Notary Public in and for the Territory of Alaska.

My commission expires June 9th, 1915.

MORTON E. STEVENS, a witness for plaintiff,  
after being duly sworn, testified as follows:

**Direct examination:**

Mr. Stevens: I desire to state that I have had a good many years' experience in looking up records, etc.; I have examined the records of the Fairbanks Precinct, Alaska, as to leases, and the lease that has

just been introduced in evidence is the only lease of record from the Reliance Mining Company to anyone whomsoever connected with the Soo quartz mining claim, that I was able to find,—and I made a thorough search for them. That is all on that subject.

Defendants moved to strike the testimony of Mr. Stevens concerning the searching of the records for a lease, and the fact that this was the only lease on record, for the reason that the testimony of Mr. Brumbaugh as a witness for plaintiff shows that this ground was being worked under another lease,—under a verbal lease at the time the work was performed; that this lease shows upon its face that it was subject to all other leases, and is for a different piece of ground altogether from the other lease. The other lease is only for 100 feet deep down, and this lease covers the whole of the mining claim. That this lease shows on its face it was subject to the verbal lease that Mr. Brumbaugh stated on the witness stand Mr. Spaulding was working under, and for that reason the testimony as to there being no other lease on record, and Mr. Steven's testimony, is immaterial.

Motion denied. Defendants except Exception allowed.

Plaintiff rests.

### **Defts' Exception No. 2.**

Defendants, by Mr. Clark move for a non-suit, on the ground that plaintiff has failed to make out a prima facie case, for the reason (a) that the act

under which said liens were filed and under which they are attempted to be foreclosed is void, and (b) that plaintiff had failed to prove the allegations of his liens and complaint, that they were employed by Raymond Brumbaugh and W. L. Spaulding, co-partners engaged in mining under the name of the Soo Mining Company, and (c) that there was no authority in law for the foreclosure of the alleged liens, and (d) that plaintiff had failed to prove the essential allegations of his complaint.

**Defts' Exception No. 3.**

Motion denied, defendants except, exception allowed.

S. A. MARTIN, a witness for defendants, heretofore sworn, testified as follows:

**Direct examination, by Mr. McGowan.**

Q Have you in your possession a copy of a notice that was taken from the Soo Mining Company?

A I believe Mr. Stevens has it.

Q You brought it in and gave it to him yourself?

A Mr. Stevens has a copy of it. (Mr. Stevens hands notice to Mr. McGowan.)

Q Is that the notice that you referred to, that Mr. Stevens has?

A Yes.

Q Where did you get that?

A That was from the mine out here; that is one of the notices that was out there.

Q Posted on the mine?

A Yes, sir.



Q How many more were there out there like that?

A There was one on the bunkhouse; this one here.

Q Was there another one any place on the claim?

A I never saw any.

Q Did you see that before the weather had taken any of the writing off it?

A Well, I saw it as it was in position.

Q Originally?

A Yes.

Q Were there any names signed to it when you first saw it?

A It is just the same now as when I first saw it.

Q When did you first see it?

A There were two of them. They were just the same. There was one on the bunkhouse and one on the gallows frame at the shaft.

Q You never saw any names on it at all, you say.

A That is just as I saw it.

Defendants ask to have same marked for identification. Marked "Defendants' Identification No. 2."

**Cross examination, by Mr. Stevens:**

All I saw was two posted on the claim, one on the gallows-frame, one on the bunkhouse;; the gallows-frame was right by the shaft. This one that has just been identified was on the gallows-frame, and the other on the bunkhouse. The one on the bunkhouse did not differ in any respect from this one; it was of the same material, cloth, and the same wrtiing.

RAYMOND, BRUMBAUGH, a witness for defendants, recalled, testified as follows:

**Direct examination, by Mr. Brown.**

Q When did you first go out to the Soc quartz mine?

A Well, I was out there during last spring at different times,—spring and summer last year. I didn't go out there to live until some time in July.

Q When you went out there to live, were there any notices posted on the claim?

A Yes sir. Three. I have one of those notices with me. The notice that you now show me was one that was posted on the claim, on the bunkhouse. One was posted at the mess-house, and one at the shaft on the gallows-frame. Mr. Martin (the plaintiff) took one of them down and brought it into town, and the other one was taken from the mess-house when the mess-house was mudded and brought into town by some of the men; I don't know who. I took this one from the bunkhouse a few days ago. Mr. Martin took one down on the 9th or 10th of November, the day he left the property, just after they all quit work. All the notices were similar, exactly the same, all three of them.

Notice offered in evidence and admitted. Marked "Defendants' Exhibit No. 1." and is as follows:

**NOTICE.**

**TO WHOM IT MAY CONCERN:**

Notice is hereby given that the undersigned, owners of the Reliance Mining Co. properties situated on Dome Creek in the Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, WILL NOT

BE RESPONSIBLE for any debts contracted and incurred by any and all Lessees or Laymen now mining and operating upon said placer mining claim under their respective leases, whether such debts be for labor performed, material furnished, or for any other cause.

All persons are hereby notified and warned, that they and each of them must look to such laymen or lessees for the payment of any claim and indebtedness, which they may now hold or which may hereafter be incurred by any such laymen or lessees.

Dated this 25th day of January, 1913.

.....  
 .....  
 .....  
 .....

(Endorsed: "1995 Detfs Ex. "1" June 12-1914 Angus McBride Clerk By P. R. Wagner Deputy".)

When I first saw the notice, the signature showed here, and the word "quartz" showed here, and this word "placer" was scratched out. The signatures showed there on this (referring to "Defendants' Exhibit No. 1")—H. E. St. George and R. C. Erchinger; "Reliance Mining Company, by H. E. St. George, R. C. Erchinger." My recollection is that it was that way on all three of the notices, and all three were alike. The proprietor of the leasehold interest there on the grounds was W. L. Spaulding.

Q I show you the original lease, the record of which was offered by the plaintiff here '(hands paper



to witness),—a lease from the Reliance Mining Company to W. L. Spaulding, dated 9 June 1913, covering the Soo quartz mining claim, and ask you if, at the time you went out there,—from the first of July until the 10th of November, the Soo quartz mining claim was being operated under this lease.

A It was not.

Q Have you a copy of the lease under which it was being operated?

A I have. (Hands paper to Mr. Brown.)

Q Is this the original?

A Yes, that is the original lease.

Q I show you a document and ask you what it is. (Hands paper to witness.)

A That is a lease from the Reliance Mining Company to W. L. Spaulding, John Letterman, and Clifford Post.

Q Do you know under what lease the Soo quartz mining claim was being operated after the first of July 1913?

A It was being operated under that lease. (Refers to last mentioned lease.)

Mr. Brown: We offer the lease in evidence.

Lease admitted and marked "Defendants' Exhibit No. 2," and is as follows:

#### LEASE.

THIS LEASE OR LAY AGREEMENT, Made and entered into this thirteenth day of May, A. D. one thousand nine hundred twelve, BY AND BETWEEN:

THE RELIANCE MINING COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, party of the first part, hereinafter referred to and designated as the lessor,

and

W. L. SPAULDING, JOHN LETTERMAN, and CLIFFORD POST, all of Fairbanks, Alaska, parties of the scond part, hereinafter referred to and designated as the lessees.

WITNESSETH:

That, whereas the lessor is the owner of certain quartz mining properties, situate at the head of Dome Creek, in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, and whereas the lessees are desirous of working a lay on a portion of said property, for the purpose of prospecting and developing the same;

NOW, THEREFORE, Lessor, for and in consideration of the covenants and agreements hereinafter set forth, on the part of lessees to be kept and performed, has leased, let, and demised, and by these presents does hereby lease let, and demise to lessees, from the date hereof until the 1st day of July,, A. D. one thousand nine hundred thirteen, all of that certain quartz mining property, stuate at the head of Dome Creek, in the Fairbanks Mining and Recording Precinct, Territory and Division aforesaid, more particularly described as follows, to-wit:

That portion of the Soo Quartz Mining Claim, beginning at the westerly end thereof, on the line between said Soo claim and the Wild Rose claim, and running thence easterly a distance of three hundred feet along a vein or lode heretofore discovered and exposed on said ground, and extending vertically for a distance of one hundred feet; the portion herein leased being a block three hundred feet in length and one hundred feet in depth on said vein or lode on which the lessees are now engaged in working; together with the necessary tools, machinery, and buildings now situate on said property and belonging to lessor.

That, for and in consideration of the services rendered by lessees in opening and developing said property, said lessees shall retain all of the gold and other precious metals and minerals extracted from the portion of said ledge herein elased to them, and need not pay to lessor any part or portion thereof.

That said lessees shall work said ground continuously and shall extract the ore from said vein in as short a space of time as is consistent with good and minerlike methods, and all work shall be done in a workmanlike and minerlike manner until the block hereby leased to them shall have been exhausted.

That lessees further covenant and agree to keep the shaft now being sunk by them on said ground in good condition and properly timbered with suitable supports around the same, in order to support said shaft for after working of said mine, and they



covenant and agree not to work any part of said ledge closer to said shaft than 15 feet, save and except where the tunnels may be cut by said lessees in getting away from said shaft, and shall not work said ledge closer than 15 feet to the surface.

That lessees shall hold lessor harmless from all charges and liens of every nature and kind, placed or by them suffered to be placed on said ground by reason of the work done by said lessees, and agree to remove all liens at their own expense.

Lessees further covenant and agree to keep posted on said ground such notices as may be provided by lessor, disclaiming any responsibility for any labor done or performed on said ground during the life of this lease, provided said lessees employ other persons besides themselves to do or perform any work under this lease.

That lessees will not sub-let said ground herein leased to them, either in whole or in part, without the written consent of lessor, and will not delegate to others, by power of attorney or otherwise, any of the powers or authority herein granted to them.

That lessees will, at the expiration of this lease or its sooner determination according to the terms hereof, quit and surrender possession of said property to lessor, free and clear from all liens and encumbrances of every nature and description; will replace all tools belonging to lessor that may have been worn out, or destroyed by them during the life of this lease, and will put all machinery and buildings leased

to them in as good condition as they now are.

Lessees covenant and agree that, in the event of their failure or neglect to work said ground continuously during the life of this lease, said lease may, at the option of the lessor, be declared forfeited, and all rights of lessees under and by virtue thereof shall be deemed canceled and forfeited to lessor, and lessees shall not, under any consideration, be entitled to any compensation for any work done by them on said ground;

Lessees further covenant and agree that they shall receive no compensation for work done, save and except what may be derived by them from the milling of any ore taken from the portion of said mine herein leased to them.

That lessor or its agents may have access to said mine at any time, for the purpose of inspecting the same and mapping or platting the work done therein, and lessees agree that, at any time when requested by lessor, they will furnish a statement of the cost of operating said ground, and the amount of gold or other precious metals derived from the milling of the ore taken therefrom, and that they will furnish to lessor such other data as may be required from time to time.

Faithfully to abide by the terms and conditions of this lease, the parties hereto do bind themselves, their and each of their heirs, executors, administrators, successors, and assigns, firmly by these presents.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year herein first above written.

In the presence of:

.....

.....

THE RELIANCE MINING COMPANY,

by R. Brumbaugh, (SEAL)

Vice-President,

& John A. Clark, (SEAL)

Secretary,

Wm. L. Spalding, (SEAL)

J. Letterman, (SEAL)

C. Post, (SEAL)

Territory of Alaska,

Fairbanks Precinct,—ss:

This is to certify that, on this . . . . day of . . . . ., A. D. one thousand nine hundred twelve, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn, personally appeared R. Brumbaugh and John A. Clark, to me personally known to be the Vice-President and Secretary respectively of The Reliance Mining Company, the corporation mentioned in and which executed the within and foregoing lease, and acknowledged to me that they signed the same as the free and voluntary act and deed of said corporation, through themselves as its said Vice-President and Secretary respectively, for the uses and purposes therein set forth; and at the same time personally



appeared before me W. L. Spalding, John Letterman, and Clifford Post, to me known to be the individuals mentioned in the foregoing lease as the lessees, and they, each for himself and not one for the other, acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes specified therein.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, on the day and year in this certificate above first written.

.....

Notary Public in and for the Territory of Alaska.

I was not present when the extension of this lease was granted. (Refers to copy of resolution of board of directors of Reliance Mining Company, pinned to Defendants' Exhibit No. 2.)

Q. Do you know anything about an extension of this lease being granted,—of your own knowledge?

A. I do.

Q. What do you know about it?

A. I know that Mr. Spaulding spoke to me about getting the extension of the lease, and I told him that I was perfectly willing at the time, and the lease was extended after I went outside, I think. I think I was a director at that time.

Q. I show you a copy of a resolution, signed by certain persons, and I ask you if you know the signatures of those people.

A. I do.

Q. Whose signatures are they?

A. L. B. Clough, H. C. Hamilton, and R. C. Erchinger.

Q. What connection did they have with the Reliance Mining Company?

A. I think Mr. Hamilton was president at that time; Mr. Erchinger was secretary at that time. They were all directors. They constituted a majority of the board of directors; there were five directors.

Mr. Brown: I offer this resolution of the board of directors in evidence.

Resolution admitted, marked "Defendants Exhibit No. 3," and is as follows:

#### RESOLUTION.

Fairbanks, Alaska,

Sept. 16, 1912.

Whereas: Under authority theretofore given by the board of Directors the President and Secretary executed and delivered a lease in favor of W. L. Spalding John Letterman and Clifford Post dated the 13th of May 1912, wherein and whereby the Company leased to said parties for the period ending July 1st 1913 300 feet in length along the lead by 100 feet in depth thereof on the Soo claim, a copy of which lease is set forth herein. And Whereas; on or about the 16th day of September 1912 at a meeting of the board of directors it was agreed and resolved to extend the term of said lease from July 1st 1913 to January 1st 1914 and the President and Secretary were duly authorized and directed to execute a new lease to said Spalding and Letterman (the said Post

having sold his interest under the former lease to said Spalding and Letterman) on the same terms as the former lease but with the extension of time incorporated therein.

And whereas the Secretary John A. Clark was on the point of leaving the territory and has now left to be gone for some time and omitted to enter the minutes of such meeting and resolution in the minute book, and the minutes also fail to show the authorization of the original lease or of the meeting at which it was authorized.

NOW THEREFORE: Resolved that the action of the President and Secreter in executing and delivering the original lease as above set forth and the authorizing of the execution and delivery of the new lease with the extension of the term thereof as recited above be and the same is hereby ratified and confirmed, and the President and Secretery are hereby authorized and directed to execute and deliver a new lease to said Salding and Letterman on the same terms as the original lease with the term extended as above mentioned.

L. B. CLOUGH

H. C. HAMILTON

R. C. ERCHINGER

(Endorsed: "892 Dated: 13 May 1912. Reliance Mining Company to W. L. Spadring et al. Lease. 1995. Defts. Exs "2 & 3" 1995 Defts Ex "3" June 12, —1914 PRW. (Deft. Ex "2" attached hereto.)")



**Cross examination, by Mr. Stevens:**

Q. I will ask you to examine "Defendants' Identification No. 2" in this case, that you saw me deliver to Mr. McGowan here in Court; you recognize that as being one of the notices?

A. Yes sir; they were all alike, they were all printed on cloth.

Mr. Stevens then offers in evidence another cloth notice, which is marked "Plaintiff's Exhibit BB", and is as follows:

**NOTICE.****TO WHOM IT MAY CONCERN:**

Notice is hereby given that the undersigned, owners of the Reliance Mining Co. properties situated on Dome Creek in the Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, **WILL NOT BE RESPONSIBLE** for any debts contracted and incurred by any and all Lessees or Laymen now mining and operating upon said placer mining claim under their respective leases, whether such debts be for labor performed, material furnished, or for any other cause.

All persons are hereby notified and warned, that they and each of them must look to such laymen or lessees for the payment of any claim and indebtedness, which they may now hold or which may hereafter be incurred by any such laymen or lessees.

Dated this 25th day of January, 1913.

.....  
.....  
.....  
.....

(Endorsed: "1995 Defts Identification 2 Filed as  
1995 Pltff's Ex "BB" June 12-1914 P. R. W.")

Defendants rest.

JOHN KUHL, a witnes for plaintiff in rebuttal,  
heretofore sworn, testified as follows:

**Direct examination, by Mr. Stevens:**

Q. Mr. Kuhl, when you worked on the quartz  
mine out here at Spaulding's—the Soo quartz mining  
claim—did you see any notice or notices posted up  
there?

A. Yes sir.

Q. Examine "Defendants' Exhibit No. 1" (hands  
same to witness); did you ever see that notice, or  
a notice like that, posted there any place?

A. No sir; I don't believe that is the notice.

Q. State whether or not the notices that you saw  
were on cloth.

A. They were on cloth; yes sir.

Q. Examine "Plaintiff's Exhibit, BB". Hands  
same to witness.)

A. Yes sir, I think this is the notice.

Q. This is the notice that you saw.

A. Yes sir; but this writing wasn't on it when I  
seen it. There was no writing at all.

Q. Were there any signatures to the notice that

you saw—any writing at the bottom,—names?

A. They were there, but you couldn't make them out. I think they were there.

Mr. Brown: The names were there?

A. Yes sir.

Mr. Stevens: You couldn't make out what names they were?

A. No sir.

Q. When was it that you first saw them?

A. Well, the first day that I went to work I seen one at the bunkhouse and one at the boiler-house; that was about the 21st of August 1913. I saw two notices there; both of them were alike, so far as I know.

Q. Did either one of the notices contain the name or names of any lessees or laymen?

A. As I have explained a minute ago, I could not make out the names on the bottom; there were some names written there, but they were worn out. That is true as to both the notices that I saw.

HUGH FERRY, a witness for plaintiff in rebuttal, heretofore sworn, testified as follows:

**Direct examination, by Mr. Stevens.**

Q. Did you see any notice or notices posted on this Soo quartz mining claim at any time you were out there in 1913?

A. Yes sir.

Q. Will you examine this notice that is marked "Defendants' Exhibit No. 1". (Hands same to witness.) State whether or not you have ever seen it



before, to your best judgment. Do you recognize that?

A. I do, sir.

Q. Is that one of the notices that you saw posted?

A. One of them.

Q. Also examine this one that I hand you, "Plaintiff's Exhibit BB". (Hands same to witness.)

A. Well, the only one I did look at was the one at the bunkhouse. There were three of them up there. I didn't pay any attention to them at the time.

Q. There were three where?

A. One at the bunkhouse, one at the mess-house, and one at the shaft. They were all the same; I didn't read them all, but I read the first one; they were all about the same, so far as I know. I looked at them all. I read the first one on the bunkhouse. I didn't see any handwriting signature; not that I could swear to. I didn't see any printed signature.

**Cross-examination, by Mr. McGowan.**

I saw the notices for the first time when I went to work there; all the time. I looked every day, but I couldn't say what morning or what night. I went to work in September; they were there then. I read the notice once.

JOHN CURRY, a witness for plaintiff in rebuttal, testified as follows, having been heretofore sworn:

**Direct examination, by Mr. Stevens:**

Q. I hand you for identification "Defendants' Exhibit No. 1" (hands same to witness.) State

whether or not you ever saw that notice or a similar notice or a similar notice.

A. I have; it was posted on this particular mining claim that we have been talking about for a couple of days,—on Dome Creek.

Q. I ask you to examine this notice marked "Plaintiff's Exhibit BB". Did you ever see that before or a similar notice? (Hands same to witness).

A. Yes, I think this is one I took off myself. It looks like it. This was posted on the shaft, on the timbers that hold the upright of the shaft, six by six I think they are. I didn't see any signatures at the bottom of the notice; no more than "January 1913." There were not any signatures that I know of; I never saw any signatures.

Q. Did you look?

A. Yes, when I took it off. When I took it off there was none on there. I took it off on November 10th or 11th. I had seen it before that time. The first time I saw it was a year ago last April, I believe it was. I was out there sawing wood for Spaulding; that would be in April 1913,—April or May, before the ice went out. These notices were there then. I just saw the notices up there, but I didn't examine them.

Q. Did you ever see that notice, or any other notice there like it, that contained the signatures of any persons at the bottom,—or company?

A. I believe the one on the cookhouse had the

signatures on it,—two or three signatures.

Q. Whose signatures?

A. I believe Ray Erchinger was one, and I don't know whether Harry St. George was on there or not; but I believe there were two signatures on the one on the cookhouse. I think the name of Captain Cunningham was also on there. I am sure their names were on there; there were some names on there; and I am sure it was theirs. The notices were cloth. I don't know whose signatures were on there, but I know there were one or two on there.

**Cross-examination, by Mr. McGowan:**

Q. Were not the words "Reliance Mining Company" written above the words "St George" and "Erchinger" on the first vacant line? I refer now to "Defendants' Exhibit No. 1", taking the first vacant line after "January 1913." Wasn't it "Reliance Mining Company" and "StGeorge" and "Erchinger, secretary," written above that?

A. No; "Reliance Mining Company" was written on the top.

Q. Where it is now?

A. Yes sir.

Q. You say Captain Cunningham's name was there?

A. I am pretty sure, because I asked who he was. I am not sure. That was some time in April 1913. I worked out there, off and on, all summer.

Q. That was the time Cunningham and Ronan were working the ground as lessees under this same



lease, and before Mr. Spaulding took it over?

A. I didn't know Cunningham was in there.

Q. That was the time Cunningham and Ronan were out there working under this lease, before Spaulding took it back?

A. Spaulding was there at the same time; I didn't know Cunningham was in it.

Q. You say you saw Cunningham's name on this notice?

A. Yes, I think so.

MARTIN MALLAND, a witness for plaintiff in rebuttal, heretofore sworn, testified as follows:

**Direct Examination, by Mr. Stevens:**

Q. Mr. Malland, I will ask you to examine "Defendants' Exhibit No. 1", also "Plaintiff's Exhibit BB", and state if you know whether you have ever seen either one of those notices before posted on this claim in question, the Soo quartz mining claim.

A. I never saw a duplicate of that. (Indicates "Defendants' Exhibit No. 1).)

Q. Look at the other one. (Plaintiff's Exhibit BB.)

A. I never saw a duplicate of either one of them.

Q. Did you ever see any notices posted on the claim.

A. I did.

Q. How many?

A. Two; there was one on the bunkhouse and one on the gallows-frame at the shaft.

Q. Do you know whether or not those notices that

you saw, or either one of them, were signed by anyone,—any signatures attached to them?

A. Well, now, I didn't pay enough attention to say I did. I examined both notices.

H. H. DECK, a witness for plaintiff in rebuttal, heretofore sworn, testified as follows:

**Direct examination, by Mr. Stevens:**

Q. Mr. Deck, examine "Defendants' Exhibit No. 1", and also Plaintiff's Exhibit BB," and state if you can whether or not you ever saw either one of those notices or similar notices posted on the Soo quartz mining claim at the head of Dome Creek.

A. Yes, I saw that notice. (Indicates "Defendants' Exhibit No. 1.)

Q. How many notices did you see?

A. Well, I seen two notices, but one in particular.

Q. Where were the two notices posted that you saw?

A. One was on the bunkhouse and one down at the mouth of the shaft.

Q. You say you noticed one in particular?

A. Yes sir.

Q. Which one?

A. The one on the bunkhouse; this is the one. (Indicates "Defendants' Exhibit No. 1.)

Q. State when it was that you first saw it, as near as you can.

A. I can't tell when I first seen it, but I can tell you when I first read it over carefully. That was

about the 5th or 6th of November 1913. I only saw two notices. There were no names there that I could see or did see.

**Cross-examination, by Mr. McGowan:**

I examined the notice carefully about the 6th or 7th of November 1913. I fix the date because I quit on the 25th of October. I went back out to the mine and I examined this notice to find out what the purpose of the notice was there. I don't remember the date that I went back, but I was there on the 6th or 7th of November and read the notice over carefully. I am sure of that. The first time I looked at this notice carefully was in November of last year. Before that I had seen two notices and I read one of them particularly. I never have seen the third one at all.

Both plaintiff and defendant rested.

The case was argued by attorneys for both plaintiff and defendant and was submitted to the Court.

That thereafter the Court announced that it had decided generally in favor of plaintiff and against defendants for all labor performed by plaintiff and his assignors prior to the ninth day of October 1913, and in favor of defendants and against plaintiff and his assignors for all labor performed by them on the Soo quartz mining claim subsequent to the ninth day of October 1913;

That thereafter plaintiffs submitted to the Court for signature findings of facts and conclusions of law, which were thereafter signed as submitted.



That thereafter, and within the time prescribed by law, defendants filed their objections to plaintiff's proposed findings of fact and conclusions of law, in the words and figures following, to-wit:

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[Title of Court and Cause.]

**Defendants' Objections to Plaintiff's Proposed Findings of Fact and Conclusions of Law.**

I. Defendants object to the second Finding of Fact contained in plaintiff's proposed findings of fact and conclusions of law for the reason that said second finding of fact and the whole thereof is not a finding upon any issue decided in this case and upon which the liability of the defendants' property to a lien is based.

II. Defendants object to the fourth finding of fact contained therein, upon the ground that the same is not in accordance with the evidence in this case, and particularly object to the last clause on said fourth finding beginning with the words, "That the failure" and continuing to the end of said paragraph, for the reason that said portion of said finding does not state any facts found by the court, but states a conclusion of law.

III. Defendants object to the sixth finding of fact therein contained, for the reason that said finding states that W. L. Spaulding employed the plaintiff and his assignors to perform the work mentioned in the complaint and in the several liens herein, whereas the said complaint and the liens each

of them states that the said plaintiff and his assignors were each employed by W. L. Spaulding and Raymond Brumbaugh, members of a mining copartnership operating the Soo quartz mining claim; and said defendants particularly object to the finding of fact contained in said sixth finding that the contract for labor to be performed by Mrs. H. H. Deck was for cooking, for the reason that services as cook are not lienable; and also particularly object to the finding therein contained that the said Spaulding contracted with William Ahlmark to pay five (\$5) dollars a day and board for the team therein mentioned, for the reason that said services are not lienable in their nature.

IV. Said defendants object to the statement contained in the seventh finding of fact therein contained, wherein it is stated that the lien notices filed by the plaintiff and his assignors contain the name of the person by whom said claimants were employed, to-wit. the defendant W. L. Spaulding, for the reason that each of the liens filed by the plaintiff and his assignors, and also the complaint herein, states that the name of the person by whom said plaintiff and his assignors were employed was W. L. Spaulding and Raymond Brumbaugh, composing a mining copartnership operating the Soo mining claim; and further particularly object to that portion of said seventh finding of fact wherein it is stated that each of the lien claimants mentioned in the complaint herein paid for preparing and filing



of record his said lien the sum of eleven and 75-100 (\$11.75) dollars, for the reason that no charge for preparing or filing said lien notices is allowed by law.

V. Defendants object to the ninth finding of fact contained in said findings of fact, for the reason that no allowance is made by law for attorneys fee in the foreclosure of liens by laborers.

VI. Defendants object to the tenth finding of fact and the claim therein, for the reason that it does not contain any statement of fact, but simply a conclusion of law.

VII. Defendants object to the statement contained in the eleventh finding of fact to the effect that the plaintiff S. A. Martin is entitled to a lien in the sum of \$357.50 upon the Soo quartz mining claim and upon other property therein mentioned, for the reason that the said statement is not a finding of a fact, but a conclusion of law.

VIII. Defendants object to the statements contained in the 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22d, 23d, and 24th findings of fact, that each of the persons named in said several paragraphs are entitled to liens upon the property described in said of said paragraphs, for the reason that each of said statements contained in said several paragraphs is a statement of a conclusion of law, and not a statement of any fact.

IX. Defendants object to the statements contained in the 25th finding of fact, and in each of



the paragraphs contained in said finding, to the effect that the said plaintiff and his assignors performed labor upon said Soo quartz mining claim after the 8th day of October, 1913, for the reason that it appears from said findings and from the evidence in this case and also from the lien notices or claims (copies of which are attached to the complaint herein) and also from the allegations of the complaint in this action, that the labor and services rendered by the plaintiff and his assignors after the 8th day of October, 1913, were rendered for the joint benefit of said W. L. Spaulding and the said plaintiff and his assignors, and for that reason the same are insufficient upon which to base any claim of lien upon the Soo quartz mining claim or any other property in which the defendants are interested.

X. Defendants object to the 1st conclusion of law contained in said findings of fact and conclusions of law, for the reason that under the findings of fact as proposed by the plaintiff the several liens claimed by the plaintiff and his assignors are void for the reason that none of said claims of lien set forth the name of the person or persons by whom the said plaintiff and his assignors were employed.

XI. Defendants object to the statement in the 2nd conclusion of law, to the effect that all of the liens mentioned in the findings of fact were duly assigned and transferred to the plaintiff, for the reason that said statement constitutes a finding of

fact, and not a conclusion of law.

XII. Defendants further object to the statement contained in the 2nd conclusion of law proposed by plaintiff, to the effect that plaintiff is entitled to have all of the liens mentioned in the complaint foreclosed and the property described in the complaint sold to satisfy said liens, for the reason that under the statements made in the finding of fact and the evidence produced in this case on behalf of the plaintiff, the said claims of lien are each and all void and of no effect for the reason that the labor and services for which the liens are claimed by the plaintiff and his assignors according to the testimony herein were not done and performed in the development or improvement of the Soo quartz mining claim but were done and performed in the course of carrying on mining operations in extracting ore, milling the same, and in the ordinary working operations of the mine.

McGOWAN & CLARK,  
JOHN K. BROWN,  
Attorneys for Defendants.

And at said time served on plaintiff's attorney and filed with the Court defendants' proposed amendments to findings of fact and conclusions of law, as follows, to-wit:



[Title of Court and Cause.]

**Defendants' Proposed Amendments to Findings of  
Fact & Conclusions of Law.**

The defendants in the above entitled action hereby propose the following amendments to the findings of fact and conclusions of law, as served and filed by the attorney for the above named plaintiff, to-wit:

I. In paragraph 1 of the findings of fact proposed by the attorney for the above named plaintiff, amend the same so that it shall read as follows: "That at all the times herein mentioned, and up to and including the 8th day of October, 1913, the defendant W. L. Spaulding was in possession of, and prospecting, developing and mining the westerly 300 feet to the depth of 100 feet of that certain quartz miinng claim, known as the Soo Quartz Mining Claim," etc., continuing as in the proposed finding of fact until the end of said proposed finding No. 1.

II. Also, in the said last mentioned paragraph No. 1 of said findings of fact, amend the last sentence thereof to read as follows: "And that the defendant, W. L. Spaulding, lessee as aforesaid, operated the westerly 300 feet to the depth of 100 feet of said mine under the name of the Soo Mining Company."

III. Amend said findings of fact by striking out paragraph 2 thereof.

IV. Amend the third finding of fact proposed by



plaintiff so that it will appear that the word "quartz", written with pen and ink above the word "placer," was, at the time of the trial of said action, legible and could readily be distinguished.

V. Amend paragraph 4 of said proposed findings of fact by striking out therefrom all of the said proposed finding, beginning with the words "with the failure" and continuing until the end of said 4th finding.

VI. Amend the 5th proposed finding of fact, so that the same will state that the defendant, W. L. Spaulding, was doing business as the Soo Mining Company, and was lessee of the westerly 300 feet of the Soo Quartz Mining Claim to a depth of 100 feet, instead of the lessee of the whole claim, as appears in said finding.

VII. Strike out all reference, in the 5th proposed finding of fact, to the ownership of a certain 3-stamp quartz mill, situated in the Soo Quartz Mine, together with all the fixtures and appliances thereunto belonging, as well as all tools, boilers, engines, hoists, cables, timbers, and other appliances used in carrying on mining operation on said mining claim, for the reason that no lien exists upon said quartz mill, or any of the personal property, or machinery or other appliances mentioned in said paragraph 5, in favor of the plaintiff or his assignors, or any of them; and for the further reason that the Court found, as a matter of law, that said mill, and said other property mentioned in said

paragraph 5 of the findings of fact proposed by plaintiff was the subject of no lien of the plaintiff or his assignors.

VIII. Amend paragraph VII of said proposed findings of fact, by striking out from the statement therein contained of the contents of the several lien notices upon which the claims of plaintiff and his assignors are based, the statement that said lien notices, and each of them, contains: "The name of the person by whom said claimant was employed, to-wit, W. L. Spaulding," for the reason that the lien notices, copies of which are attached to the complaint herein, show on their face that the persons by whom each of said claimants were employed, were W. L. Spaulding and Raymond Brumbaugh, as copartners, doing business under the name of the Soo Mining Company.

IX. Amend said findings of fact by striking therefrom all of paragraph 10 thereof.

X. Amend paragraphs 11 to 24, inclusive, of said findings of fact proposed by plaintiff, by striking from each of said paragraphs the statement contained therein, that the plaintiffs and his said assignors are each entitled to a lien for the several sums found to be due to them upon the Soo Quartz Mining Claim, or upon any other property, for the reason that such statement is not a finding of fact, but a conclusion of law, and should not be included in the findings of fact.

XI. Amend each of the said paragraphs last



named, to-wit, from 11 to 24, inclusive, of said proposed findings of fact, by making it appear in each of said paragraphs that the person named therein is entitled to a lien upon the westerly 300 feet of the Soo Quartz Mining Claim to a depth of 100 feet, instead of upon the whole claim, as stated in each of said paragraphs.

XII. Amend paragraph 24 of said proposed findings of fact, by striking therefrom any statement that William Ahlmark, one of plaintiff's assignors, furnished a team of horses at the rate of \$5.00 per day between June 30th and October 8th, 1913, or at any other time, or at all, for the reason that the services of such team are not lienable.

XIII. Amend paragraph 25 of said proposed findings of fact, by striking from said proposed findings the whole of said paragraph 25, and also sub-paragraphs (a) to '(m), inclusive, for the reason that it appears upon the face of said findings that none of the labor mentioned in said paragraph 25, or its sub-paragraphs, constitutes a lienable debt.

XIV. Amend paragraph 2 of the conclusions of law proposed by plaintiff, by striking therefrom the following words: "That all of said liens were duly assigned and transferred to plaintiff herein," for the reason that such statement is a statement of fact, and not a statement of a conclusion of law.

McGOWAN & CLARK,  
JOHN K. BROWN,  
Attorneys for Defendants.



That thereafter the Court overruled defendants' objections to plaintiff's proposed findings of fact and conclusions of law, to which ruling defendants then and there excepted and said exception was allowed, and the Court refused to amend the proposed findings of fact and conclusions of law submitted by the attorney for plaintiff in accordance with the amendments filed by defendants, to which ruling defendants then and there excepted and said exception was allowed;

That thereafter the Court duly made and signed the proposed findings of fact and conclusions of law submitted by plaintiff, to all which findings so made and signed by said Court, to which defendants had theretofore objected, as hereinabove set forth, defendants then and there excepted and said exception was allowed, and defendants then and there excepted to the refusal of said Court to amend said findings of fact and conclusions of law in accordance with defendants' proposed amendments theretofore filed with said Court, which said exception was then and there allowed to each of said appearing defendants;

And now, in furtherance of justice and that right may be done, the said defendants, W. L. Spaulding and Reliance Mining Company, present the foregoing as their bill of exceptions in this cause, and pray that the same may be settled and allowed, and signed and certified by the Judge of this Court, in

the manner provided by law.

McGOWAN & CLARK,  
JOHN K. BROWN,  
Attorneys for Defendants.

Due service of the within Proposed Bill of Exceptions and receipt of a copy thereof are hereby acknowledged this 14th day of October 1915.

MORTON E. STEVENS,  
Attorney for Pltff.

(Indorsed: "Filed in the District Court Territory of Alaska 4th Div. Oct. 14 1915 J. E. Clark Clerk By Sidney Stewart Deputy. Re-filed as of date Nov. 9 1915 J. E. Clark, Clerk, by Sidney Stewart, Deputy.")

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[Title of Court and Cause.]

**Order Settling Bill of Exceptions.**

BE IT REMEMBERED that, on the 14th day of October, 1915, the defendants W. L. Spaulding and the Reliance Mining Company presented the foregoing bill of exceptions to the Court for settlement, which said proposed bill of exceptions was served and filed within the time allowed by the orders of the Court, and thereafter the plaintiff, for good cause shown, was given and granted until and including the eighth day of November, 1915, within which to prepare, serve, and file proposed amendments to said proposed bill of exceptions, and that no amendments or objections have been made to said proposed bill of exceptions, and the time for

filing objections has passed, and it appearing to the satisfaction of this Court, on examination of the proposed bill of exceptions, that it contains a full, true, and correct record of the proceedings in connection with said matter, and that the same is true and correct in all particulars, and contains all the material testimony, evidence, and exhibits, and other proof introduced by the respective parties during the hearing of said cause, and the Court being fully advised in the premises; Now, therefore, upon motion, it is ordered that the foregoing proposed bill of exceptions be, and the same is, hereby approved, allowed, and settled as the bill of exceptions in the above entitled cause and made a part of the record herein, and that the same has been filed and presented within the time allowed by the orders of the Court, and that the clerk of this Court shall re-file said bill of exceptions as of this date.

Done at Fairbanks, Alaska, this ninth day of November, 1915, in open Court.

CHARLES E. BUNNELL,

District Judge.

Entered in Court Journal No. 13, page 336.

(Indorsed: "Filed in the District Court, Territory of Alaska, 4th Div., Nov. 9, 1915, J. E. Clark, by Sidney Stewart, Deputy.")

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[Title of Court and Cause.]

**Findings of Fact and Conclusions of Law.**

This cause came on regularly for trial on the 11th



day of June, 1914, before the court, on the equity side thereof, without a jury, and the plaintiff appearing in person and by his Attorney Morton E. Stevens, Esq., and the defendants appearing by Messers McGowan & Clark and John 'K. Brown, Esq., and the court hearing and considering all of the evidence introduced by the respective parties, finds the facts as follows, to-wit:

I.

That at all times herein mentioned, and up to and including the 8th day of October, 1913, the defendant, W. L. Spaulding was in possession of, and prospecting, developing and mining, the westerly 300 feet of that certain quartz placer mining claim, to a depth of 100 feet, known as the Soo Quartz Mining Claim, located about one-half mile Northwest of Pedro Dome, on the right limit of Dome creek, and opposite Creek Placer Mining Claim No. 9 Above Discovery, in the Fairbanks Precinct, Alaska, under a lease from the defendant, the Reliance Mining Company, a corporation organized and existing under the laws of the State of Nevada, and carrying on business in Alaska, which company, the said Reliance Mining Company, was at all times herein mentioned, and now is, the owner of said Soo Quartz Mining Claim. And that defendant, W. L. Spaulding, lessee as aforesaid, operated said mine under the name of the Soo Mining Company.

II.

That at all times between the 8th day of October,

1913 and the 10th day of November, 1913, said Soo Quartz Mining Company was mined and operated jointly by defendant, W. L. Spaulding and the plaintiff, together with other laborers, plaintiff's assignors herein.

### III.

That on or about January 25th, 1913, the defendant, the Reliance Mining Company, posted upon said Soo Quartz Mining Claim, in conspicuous places, three notices which were in words and figures as follows, to-wit:

#### NOTICE.

#### TO WHOM IT MAY CONCERN:

Notice is hereby given that the undersigned, owners of the Reliance Mining Company, properties situated on Dome Creek in the Fairbanks Recording Precinct, Fourth Division, Territory of Alaska, **WILL NOT BE RESPONSIBLE** for any debts contracted and incurred by any and all Lessees or laymen now mining and operating upon said Placer Mining Claim under their respective leases, whether such debts be for labor performd, material furnished, or for any other cause.

All persons are hereby notified and warned, that they and each of the must look to such laymen or lessees for the payment of any claim and indebtedness, which they may now hold or which may hereafter be incurred by any such laymen or lessees.

Dated this 25th day of January, 1913.

That the court further finds that when said notices



were originally posted, that the printed word "placer", in the body of said notice, was lined out with pen and ink, and the word "quartz", written with pen and ink above said word "placer", and that at the time of posting said notices, as aforesaid, the same were signed by Reliance Mining Co., R. C. Erchinger, Secretary, and by H. E. St. George. That thereafter the said lining out of said word "placer" in said notices and the word "quartz" written above said word, as well as the words, "Reliance Mining Company" and the signatures to said notices, became weather-beaten and illegible and finally disappeared.

#### IV.

That the lease under which the defendant, W. L. Spaulding worked and operated said mine, was never filed for record or recorded in the recorder's office for said Fairbanks Precinct, Alaska, wherein said mining property is situate and that said notices posted, as aforesaid, or any of them, did not contain the name or names of the lessee or lessees or other person or persons, other than the owner operating said property. That the failure of said Reliance Mining Company to post three notices in conspicuous places containing the name or names of the lessee or lessees or other person or persons operating said property, the court finds to be conclusive proof of the consent of such owner of said property, that its interest in such mining property shall be subject to any lien or liens for labor performed, or material furnished in the working or development or oper-



ating said mining claim.

V.

That at all times herein mentioned, the defendant, W. L. Spaulding, lessee of said mining claim, as aforesaid, doing business as the Soo Mining Company, was, and now is the owner of that certain three stamp mill situate upon Soo Quartz Mining Claim, together with all of the fixtures and appliances thereunto belonging, as well as all tools, boilers, engines, hoists, cables, timbering and other appliances used in carrying on mining operations in and upon said mining claim.

VI.

That on or about the dates hereinafter mentioned, the same being about the dates of the commencement of the performance of labor in and upon said mining claim, the said defendant, W. L. Spaulding, by himself or through his duly authorized foreman or agent, entered into a contract of employment, whereby, as lessee and operator of said mine, he employed at the rate of \$5.00 per day, besides board and lodging, the following persons to work and labor upon, in and about said Soo Quartz Mining Claim, in the prospecting, developing, improving and mining of said premises, as follows:

S. A. Martin, John Curry, John Nyland, Walfred Peterson, Al Myers, John Kuhl, Ole Simonson, Steve Paskalich, H. H. Dech, Mrs. H. H. Dech, Hugh Ferry, Louis Behl and William Ahlmark; and that Martin Milland was employed at the rate of \$6.00

per day for labor performed as blacksmith. That the said contract for labor to be performed by the said Mrs. H. H. Dech, was for cooking for employees in the development and mining of said premises, and that the contract between the said defendant, W. L. Spaulding and the said William Ahlmark, was both for his own labor upon said premises and for his team of horses in the transportation and hauling of wood for said mine, at \$5.00 per day and board for said team.

## VII.

That on or about the 7th day of November, 1913, the said S. A. Martin, John Curry, John Nyland, Walfred Peterson, Al Myers, John Kuhl, Ole Simonson, Steve Paskalich, H. H. Dech, Mrs. H. H. Dech, Hugh Ferry, Louis Behl, William Ahlmark and Martin Milland each made, executed and swore to, before a Notary Public for Alaska, a notice of lien upon said Soo Quartz Mining Claim, the leasehold thereon, of the said W. L. Spaulding, together with the stamp mill, machinery, appliances and tools thereunto belonging and used in connection with the operation of said mine. That each of said notices made by each of said persons, was for labor performed by said persons upon and in said mining claim in the prospecting, developing, improving and mining the same, saving and excepting the lien of the said Mrs. H. H. Deck, which was for cooking for employees of said mine in the operation thereof, and also saving and excepting a portion of the lien of

William Ahlmark for furnishing a team of horses used in the transportation of wood for said mine.

That each of said lien notices contained a true statement or substantially true statements of claimant's demand, after deducting all just credits and set-offs, and contained the name of the owner or reputed owner of said mining claim, to-wit, the Reliance Mining Company, and also the name of the person by whom said claimant was employed, to-wit, defendant W. L. Spaulding, or his agent, and also, a description of the property to be charged with the lien sufficient for identification, to-wit, the mining property, lease and machinery above described.

That prior to the expiration of thirty days from the date of the last service performed or materials furnished, to-wit, on the 7th day of November, 1913, each of said claimants filed for record in the Precinct where all of said mine and other property in said notice described is situate, towit, in the office of the Commissioner and Recorder of Fairbanks Precinct, Alaska, his said lien notice. That each of said lien claimants paid for preparing and filing for record his said lien notice, as aforesaid, the sum of \$11.75.

#### VIII.

That after the filing of each of said liens and before the institution of this suit, towit, about December 4, 1913, each of said lien claimants, except S. A. Martin, for a valuable consideration, assigned and transferred his claim and lien to the said S. A. Martin.



## IX.

That \$75.00 for each separate cause of action in this suit, is a reasonable attorney's fee for the institution and prosecution of each of said causes of action in this suit and in this court, towit, \$2,025.00

## X.

That the act of the First Territorial Legislature for Alaska, relating to liens, contained in Chapter 79, was approved April 30, 1913, and became a law in full force and effect July 30, 1913.

## XI.

That S. A. Martin, in pursuance of said contract at the rate of \$5.00 per day, as aforesaid, and between July 30th and October 8th, 1913, both inclusive, performed 71½ days labor upon said mining property, amounting to \$357.50: That no part thereof has been paid and that there is now due and owing to the said S. A. Martin, for said labor, said sum of \$357.50, after deducting all just credits and set-offs, and that the said S. A. Martin is entitled to a lien to the extent of said sum of \$357.50, upon said Soo Quartz Mining Claim above described and upon any and all interest of W. L. Spaulding as lessee of said premises, and upon that certain three stamp quartz mill, situate upon said mining claim, belonging to said W. L. Spaulding, as well as all of the machinery, appliances, tools and improvements of every nature whatsoever, belonging to said defendant, W. L. Spaulding or to said Reliance Mining Company. And that the said S. A. Martin is entitled to have

his said lien foreclosed in this suit.

## XII.

That the said John Curry, in pursuance of said contract at the rate of \$5.00 per day, as aforesaid, between September 30th and October 8th, 1913, both inclusive, performed 38 days labor upon said mining property, amounting to One Hundred Ninety Dollars (\$190.00): That no part thereof has been paid, and that there is now due and owing to the assignee of the said John Curry said sum of One Hundred Ninety Dollars (\$190.00), after deducting all just credits and setoffs, and that his assignee, plaintiff herein, is entitled to a lien to the extent of One Hundred Ninety Dollars (\$190.00) upon said Soo Quartz Mining Claim above described, and upon any and all interest of W. L. Spaulding, as lessee of said premises, and upon that certain three stamp mill, situate upon said mining claim, belonging to said Spaulding, as well as all of the machinery, appliances, tools and improvements of every nature whatsoever belonging to the said defendant Spaulding, or to said Reliance Mining Company. And that the plaintiff herein is entitled to have said lien foreclosed in this suit.

## XIII.

That John Nyland, in pursuance of said contract at the rate of \$5.00 per day, as aforesaid, and between August 29th and October 8th, 1913, both inclusive, performed 41 days labor upon said mining property, amounting to Two Hundred Five Dollars



(\$205.00): That no part thereof has been paid, and that there is now due and owing to the assignee of said Nyland for such labor, after deducting all just credits and setoffs, the sum of Two Hundred Five Dollars (\$205.00), for which plaintiff herein is entitled to a lien to the extent of Two Hundred Five Dollars (\$205.00) upon said Soo Quartz Mining Claim, and upon all of the interest of said Reliance Mining Company and said W. L. Spaulding, of all of the property above described. That plaintiff herein is entitled to have said lien for said sum foreclosed herein.

#### XIV.

That Walford Peterson, in pursuance of said contract at said rate of \$5.00 per day, and between the 30th day of July and 8th day of October, 1913, both inclusive, performed 70 days labor upon said mining property, amounting to Three Hundred Fifty Dollars (\$350.00): That no part thereof has been paid except the sum of Fifty Dollars (\$50.00), and that there has been since said 8th day of October, 1913, due the sum of Three Hundred Dollars (\$300.00), after deducting all just credits and setoffs, and that his assignee, plaintiff herein, is entitled to a lien, and a foreclosure thereof in this suit to the extent of said sum of Three Hundred Dollars (\$300.00), besides interest, upon said Soo Quartz Mining Claim, and upon all of the interest of said Reliance Mining Company, and the interest of said W. L. Spaulding, in said mining property, and of stamp mills, ma-



chinery, tools and improvements of every nature whatsoever upon and in said mining claim herein described.

### XV.

That Al Myers, in pursuance of said contract at said rate of \$5.00 per day, and between July 30th and October 8th, 1913, both inclusive, performed 68½ days labor, amounting to Three Hundred Forty Two Dollars and Fifty Cents (\$342.50): That no part thereof has been paid, and that there has been due and owing thereon since the 8th day of October, 1913, after deducting all just credits and set-offs, the sum of Three Hundred Forty Two Dollars and Fifty Cents (\$342.50), and that his assignee, plaintiff herein, is entitled to a lien and to have the same foreclosed herein, upon all of the property above described, both of the said Reliance Mining Company and the said W. L. Spaulding.

### XVI.

That John Kuhl, in pursuance of said contract, and at the rate aforesaid, between August 11th and October 8th, 1913, both inclusive, performed 58 days labor, upon said mining property, amounting to Two Hundred Ninety Dollars (\$290.00): That no part thereof has been paid, and that the same has been due and owing since said October 8th, 1913, after deducting all just credits and setoffs, and that his assignee, plaintiff herein, is entitled to a lien and to have the same foreclosed upon all of said property herein above described of the said Reliance Min-

ing Company and said W. L. Spaulding.

### XVII.

That Olie Simonson, in pursuance of said contract at the rate aforesaid and between September 1st and October 8th, 1913, both inclusive, performed 32 days labor upon said property, amounting to One Hundred Sixty Dollars '(\$160.00): That no part thereof has been paid and that there has been due since October 8th 1913, after deducting all just credits and setoffs, said sum of One Hundred Sixty Dollars (\$160.00); that his assignee, plaintiff herein, is entitled to a lien and to have the same foreclosed herein upon all of the property hereinabove described of the said Reliance Mining Company and of the said W. L. Spaulding.

### XVIII.

That Martin Milland, in pursuance of said contract, at the rate of \$6.00 per day as aforesaid, and between August 14th and October 8th, 1913, both inclusive, performed 53½ days labor as blacksmith upon and for the benefit of said mining property, amounting to Three Hundred Twenty One Dollars (\$321.00): That no part thereof has been paid except the sum of Fifty Dollars (\$50.00) leaving a balance of Two Hundred Seventy One Dollars (\$271.00), which is, and since October 8th, 1913 has been due and owing, after deducting all just credits and setoffs, and that his assignee, plaintiff herein, is entitled to a lien and to have the same foreclosed herein upon all of the property herein described of

the said Reliance Mining Company and of the said W. L. Spaulding.

### XIX.

That Steve Paskalish, in pursuance of said contract at said rate of \$5.00 per day, between September 25th and October 8th, 1913, both inclusive, performed  $13\frac{1}{2}$  days labor upon said mining property, amounting to Sixty Seven Dollars and fifty cents (\$67.50): That no part thereof has been paid and that since said October 8th 1913, there has been due, after deducting all just credits and setoffs, said sum of Sixty Seven Dollars and fifty cents (\$67.50): That his assignee, plaintiff herein, is entitled to a lien and to have the same foreclosed herein for said sum upon all of the property herein described of the said Reliance Mining Company and of the said W. L. Spaulding.

### XX.

That H. H. Dech, in pursuance of said contract at the said rate, between August 25th and October 8th 1913,, both inclusive, performed  $61\frac{1}{2}$  days labor upon said mining property, amounting to Three Hundred Seven Dollars and fifty cents '(\$307.50) That no part thereof has been paid, except the sum of Twenty Dollars (\$20.00), that the balance, to wit \$287.50, has since October 8th 1913 been due, after deducting all just credits and setoffs, and that his assignee, plaintiff herein, is entitled to a lien for said sum, and to have the same foreclosed herein upon all of the property herein above described of



the said Reliance Mining Company and of the said W. L. Spaulding.

### XXI.

That Mrs. H. H. Dech, in pursuance of said contract at said rate, between July 30th and October 8th 1913, performed 65 days labor upon said mining property, in cooking for the laborers during the operation of said mine, amounting to Three Hundred Twenty Five Dollars (\$325.00): That no part thereof has been paid and since October 8th 1913, there has been due said sum of Three Hundred Twenty Five Dollars (\$325.00), and that his assignee, plaintiff herein, is entitled to a lien and to have the same foreclosed herein upon all of the mining property herein described of the said Reliance Mining Company and of the W. L. Spaulding.

### XXII.

That Hugh Ferry, in pursuance of said contract at said rate and between September 13th and October 8th 1913, both inclusive, performed 26 days labor upon said property, amounting to One Hundred Thirty Dollars (\$130.00): That no part thereof has been paid, and that there has been due since October 8th 1913 upon said claim, after deducting all just credits and setoffs, said sum of One Hundred Thirty Dollars (\$130.00), and that his assignee, plaintiff herein, is entitled to a lien and to have the same foreclosed herein for said sum upon all of the property herein described of the said Reliance Mining Company and of the said W. L. Spaulding.

## XXIII.

That Louis Behl, in pursuance of said contract at said rate, between August 3rd and November 1st, 1913, both inclusive, performed 73 days labor upon said mining property, amounting to Three Hundred Sixty Five Dollars (\$365.00): That no part thereof has been paid except the sum of Sixty Five Dollars (\$65.00) for labor performed, after October 8th, 1913, and that there is and has been since October 8th 1913, due, after deducting all just credits and set offs for said labor the sum of Three Hundred Dollars (\$300.00), and that his assignee, plaintiff herein is entitled to a lien for said sum, and to have the same foreclosed herein, upon all of the mining property herein described of the said Reliance Mining Company and of the said W. L. Spaulding.

## XXIV.

That William Ahlmark, in pursuance of said contract and at the rate of \$5.00 per day, between July 30th and October 8th 1913, both inclusive, performed 58½ days labor as teamster in and about and for the benefit of the operation of said mine, amounting to Two Hundred Ninety Two Dollars and fifty cents (\$292.50): That no part thereof has been paid and that said sum, after deducting all just credits and setoffs has been due since October 8th 1913, and that his assignee, plaintiff herein, is entitled to a lien and to have the same foreclosed for said sum of \$292.50 upon all of the property herein described of the said Reliance Mining Company



and of the said W. L. Spaulding; and that the said William Ahlmark in pursuance of his said contract above described furnished in the transportation of wood and supplies for the benefit and at the operation of said mine, his team of horses at the rate of \$5.00 per day between July 30th and October 8th 1913 for 49 days, amounting to Two Hundred Forty Five Dollars (\$245.00): That no part of said sum has been paid except the sum of One Hundred Twelve Dollars (\$112.00) and that there has been due upon said claim, since October 8th 1913, after deducting all just credits and setoffs for team hire as aforesaid, the sum of One Hundred Thirty Three Dollars (\$133.00) and that the assignee of the said William Ahlmark, plaintiff herein, is entitled to a lien for said sum, and to have the same foreclosed herein, upon all of the property herein described of the said Reliance Mining Company and of the said W. L. Spaulding.

### XXV.

The Court further finds that the plaintiff, S. A. Martin, performed labor upon said property as a miner at the agreed price of \$5.00 per day, between October 8th and 25th 1913, both inclusive, and that said Martin performed labor upon said claim as foreman, between October 25th and November 10th 1913, both inclusive, at the agreed price of \$8.00 per day, amounting in all to \$200.00, of which \$72.45 has been paid, leaving a balance due of \$127.05.



(a)

That the said John Curry performed labor as a miner upon said property between October 9th and November 9th 1913, both inclusive, at the agreed price of \$5.00 per day, to the value of \$182.00, of which \$57.40 has been paid, leaving a balance due of \$124.60.

(b)

That the said John Nyland performed labor upon said property at the agreed price of \$5.00 per day, between October 9th and November 9th, 1913, both inclusive, of the value of \$142.50, of which \$59.31 has been paid, leaving a balance due of \$83.19.

(c)

That the said Walfred Peterson performed labor upon said premises between October 9th and November 9th, 1913, both inclusive, at the agreed price of \$5.00 per day, to the value of \$125.00, of which \$57.20 has been paid, leaving a balance due of \$67.80.

(d)

That the said Al Myers performed labor as a miner upon said premises between October 9th and November 9th 1913, both inclusive, at the agreed price of \$5.00 per day, amounting to \$147.50, of which \$54.75 has been paid, leaving a balance due of \$92.75.

(e)

That the said John Kuhl, between October 9th and November 1913, both inclusive, performed labor upon said premises at the agreed price of \$5.00 per day, amounting to \$95.00, of which \$39.25 has been

paid, leaving a balance due of \$55.75.

(f)

That the said Ole Simonson, between October 9th and November 9th 1913, both inclusive, performed labor upon said premises at the agreed price of \$5.00 per day, amounting to \$125.00 of which the sum of \$51.65 has been paid, leaving a balance due of \$73.35.

(g)

That the said Martin Milland, performed labor as a blacksmith for the benefit of the mining of said premises, between October 9th and November 9th, 1913, both inclusive, at the agreed rate of \$6.00 per day, amounting to \$192.00, of which \$69.50 has been paid, leaving a balance due of \$122.50.

(h)

That the said Steve Paskalish performed labor upon said premises between October 9th and November 9th 1913, both inclusive at the rate of \$5.00 per day, amounting to \$127.50, of which \$51.75 has been paid, leaving a balance due of \$75.75.

(i)

That the said H. H. Dech, performed labor upon said claim between October 9th and November 9th 1913, both inclusive, at the rate of \$5.00 per day of the value of \$72.50, of which \$40.00 has been paid, leaving a balance of \$32.50.

(j)

That the said Mrs. H. H. Dech performed labor as cook for employes in the operation of said premises between October 9th and November 14th 1913,

both inclusive, of the value of \$167.50, of which \$57.85 has been paid, leaving a balance due of \$109.65.

(k)

That the said Hugh Ferry between October 8th and November 9th 1913, both inclusive, performed labor upon said premises at the agreed price of \$5.00 per day amounting to \$140.00, of which \$56.81 has been paid, leaving a balance due of \$83.19.

(l)

That the said William Ahlmark, between the 9th day of October, and November 9th 1913, both inclusive, performed labor for the benefit of the operation of said mining premises, as teamster, hauling wood and supplies, at the agreed price of \$5.00 per day, for 25 days, and also furnished a team of horses for the use and benefit of said mining operation in hauling wood and supplies, and at the agreed price of \$5.00 per day and board for said team for 26 days, between said last two mentioned dates, amounting in all to \$255.00 of which \$115.00 has been paid, leaving a balance due of \$140.00.

(m)

That after the performance of the services of all of the parties in this paragraph described, and before the expiration of 30 days, thereafter to wit: on or about December 2nd 1913, each of said parties in this paragraph described for himself prepared and duly verified a notice of lien for the services performed, respectively, substantially in the same manner as



the liens heretofore described herein, and did on or about said 2nd day of December, 1913, file the same of record in the office of the Commissioner and Ex-Officio Recorder of the Fairbanks Precinct, Alaska, and thereafter, but before the institution of this suit, all of said parties mentioned in this paragraph, excepting the said S. A. Martin, duly assigned, to the said S. A. Martin, plaintiff herein, and for valuable consideration, each of said lien accounts and notices in this paragraph mentioned.

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### CONCLUSIONS OF LAW.

The Court finds as conclusions of law herein as follows:

#### I.

That all of the claims of the various persons described in the Findings of Fact down to paragraph 25 constitute a lien upon the Soo Quartz Mining Claim in said Findings of Fact described.

#### II.

That all of said liens were duly assigned and transferred to plaintiff herein, and that plaintiff is entitled to have all of said liens foreclosed, herein, and that the property described in plaintiff's complaint and in said Findings of Fact be sold according to law to satisfy said liens.

#### III.

The Court further finds as a matter of law that no lien for attorney's fees exists in this case.

#### IV.

That no lien for the preporation or filing of any

lien notices exists.

That no lien exists for any of the labor or services performed after October 8th 1913, as described in paragraph 25 of said Findings of Fact, for the reason that said mining property was after said 8th day of October, 1913 operated jointly by the defendant W. L. Spaulding and the plaintiff, together with other laborers to wit, plaintiff's assignors, as hereinbefore described.

A decree may issue herein in accordance with said Findings of Fact and these Conclusions of Law.

Dated this 17th day of September, 1914.

F. E. FULLER,  
Judge.

Entered in Court Journal No. 13, page 17.

Service of the foregoing findings of fact and conclusions of law admitted and a true copy thereof received this 10th day of September, 1914.

McGOWAN & CLARK,  
JOHN K. BROWN,

Attorney for deft's.

(Indorsed: "Filed in the District Court, Territory of Alaska 4th Div. Sep. 10 1914. Angus McBride Clerk by P. R. Wagner Deputy.")

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[Title of Court and Cause.]

**Decree.**

This cause came on regularly for trial on the 11th day of June 1914, before the Court, the plaintiff appearing in person and by counsel, and the defend-

ants appearing by counsel, and the Court having heard all of the evidence and proofs produced by the respective parties herein, and having duly considered the same, and after hearing arguments of counsel, and being fully advised in the premises announced his decision, and thereafter to wit: on the . . . . . day of September, 1914, signed and entered herein Findings of Fact and Conclusions of Law, and being fully advised in the premises,

It is hereby ordered, adjudged and decreed that the plaintiff herein, S. A. Martin, is entitled to and has a lien upon that certain quartz mining claim known as the Soo Quartz Mining Claim, located about one half mile Northwest of Pedro Dome, on the right limit of Dome Creek, and opposite Creek Placer Mining Claim Number Nine above Discovery, in the Fairbanks Precinct, Alaska, owned by the defendant, the Reliance Mining Company, a corporation, and leased and operated by the defendant W. L. Spaulding.

It is further ordered and decreed that plaintiff is entitled to and has a lien upon that certain three stamp mill, situate upon said quartz mining claim, together with all of the fixtures and appurtenances thereunto belonging, as well as tools, boilers, engines, hoists, cables, timbering and other appurtenances used in carrying on mining operations in and upon said mining claim, together with all improvements of every nature whatsoever situate upon said mining claim or used in connection therewith, owned by the



said Reliance Mining Company and the said defendant W. L. Spaulding, or either of them.

It is further adjudged and decreed that said lien upon all of the above described property is for services performed or materials furnished by said plaintiff and his assignors between July 30th 1913 and October 8th 1913, both inclusive, in the following amounts: S. A. Martin, \$357.50; John Curry, \$190.00; John Nyland, \$205.00; Wilford Peterson, \$300.00; Al Myers, \$342.50; John Kuhl, \$290.00; Ole Simonson, \$160.00; Martin Milland, \$271.00; Steve Paskalish, \$67.50; H. H. Dech, \$287.50; Mrs. H. H. Dech, \$325.00; Hugh Ferry, \$130.00; Louis Behl, \$300.00; William Ahlmark, \$425.50; aggregating the sum of Thirty Six Hundred Fifty One & 50-100 (\$3651.50) Dollars, to which aggregate amount plaintiff has a lien upon all of said premises as aforesaid, together with interest thereon at the rate of eight percent (8 per cent) per annum from October 8th, 1913, amounting in all to the sum of Four thousand one hundred twenty-five and 35-100 (\$4125.35) Dollars, besides costs of suit to be taxed.

It is further ordered, adjudged and decreed, that execution may be issued herein by the Clerk of this Court, and said liens upon said property, and the whole thereof foreclosed according to law, and that said property shall be sold according to law in the same manner as real property under execution, to satisfy said liens due to plaintiff as aforesaid.

Dated this 22nd day of May, 1915.

CHARLES E. BUNNELL,  
Judge.

Entered in Court Journal No. 13, page 175.

(Indorsed: "Filed in the District Court Territory of Alaska 4th Div. May 22 1915 J. E. Clark Clerk by P. R. Wagner Deputy.")

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[Title of Court and Cause.]

**Assignment of Error.**

Now on the 11th day of November, 1915, come the above named defendants, W. L. Spalding and Reliance Mining Company, a coropration, by Messrs. McGowan & Clark and John K. Brown, their attorneys, and say that the decree entered in the said cause on the 1st day of June, 1915, is erroneous and against the just rights of the said defendants, W. L. Spalding and Reliance Mining Company, a corporation, for the following reasons, to-wit:

I.

The court erred in denying defendants' motion to strike paragraphs VI, VIII and IX of each of plaintiff's twenty-seven separate causes of action set forth in his complaint on file in said action.

II.

The court erred in denying defendants' motion to strike plaintiff's Exhibits A, A 1, B, B 1, C, C 1, D, D 1, E, E 1, F, F 1, G, G 1, H, H 1, I, I 1, J, J 1, K, K 1, L, L 1, M, N, N 1, attached to plaintiff's complaint and referred to in said separate causes of ac-

tion.

### III.

The court erred in refusing to grant defendants' motion to require plaintiff to make his complaint more definite and certain by setting forth in paragraph V of plaintiff's first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fourteenth (2), fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, and twenty-sixth causes of action, and each of them, what portion of the labor described therein was performed in running tunnels, what portion in opening stopes, what portion in working and extracting the ore from said mine and what portion in developing and improving said mine and what portion in milling the ore taken therefrom, and in what way said labor so alleged to have been performed was of the value to said mining property alleged therein.

### IV.

The court erred in overruling the defendant's demurrer to the following causes of action contained in the complaint herein, and to each of said causes of action, to-wit: the first, third, fifth, seventh, ninth, eleventh, thirteenth, the second cause of action designated as the fourteenth, sixteenth, eighteenth, twentieth, twenty-second, twenty-fourth and twenty-fifth.



## V.

The court erred in overruling and refusing to allow defendants' proposed amendment to the first finding of fact proposed by plaintiff, which amendment is as follows, to-wit:

"In paragraph I of the findings of fact proposed by the attorney for the above named plaintiff, amend the same so it shall read as follows: 'That at all the times herein mentioned and up to and including the 8th day of October, 1913, the defendant W. L. Spalding was in possession of and prospecting, developing and mining the westerly 300 feet to the depth of 100 feet, of that certain quartz mining claim known as the Soo Quartz Mining Claim.'"

## VI.

The court erred in refusing to allow and overruling the defendants' proposed amendment to the first finding of fact proposed by plaintiff, which amendment reads as follows: "Amend the last sentence thereof to read as follows: "And that the defendant W. L. Spalding, lessee as aforesaid, operated the westerly 300 feet to the depth of 100 feet of said mine, under the name of the Soo Mining Company."

## VII.

The court erred in refusing to allow the defendants' proposed amendment to the third finding of fact proposed by plaintiff, so that it will appear in said third proposed finding of fact that the word "quartz" written in pen and ink above the word "placer" was at the time of the trial of said action legible and

could readily be distinguished.

### VIII.

The court erred in refusing to allow the proposed amendment of the defendant to the proposed fourth finding of fact proposed by plaintiff, which amendment proposed to strike out all of the said fourth finding of fact reading as follows: "That the failure of the said Reliance Mining Company to post three notices in conspicuous places containing the name or names of the lessee or lessees, or other person or person, operating said property, the court finds to be conclusive proof of the consent of said owner of such property that its interest in such mining property shall be subject to lien, or liens, for labor performed or material furnished in working, developing or operating on said mining claim," for the reason that the same states a conclusion of law and not any fact found upon the issues in said case.

### IX.

The court erred in refusing to sustain defendants' objection to the fourth finding of fact proposed by plaintiff, upon the ground that the same is not in accordance with the evidence in the case, and for the reason that said last paragraph of said finding does not state any facts found by the court, but states a conclusion of law.

### X.

The court erred in refusing to allow the amendment proposed by defendants to the fifth finding of fact proposed by plaintiff, which amendment required

that the said proposed finding of fact should state that the defendant W. L. Spalding was doing business as the Soo Mining Company, and was lessee of the westerly 300 feet of the Soo Quartz Claim, to a depth of 100 feet, instead of the lessess of the whole claim, as appears in said finding proposed by plaintiff.

### XI.

The court erred in refusing to strike out in said fifth finding of fact, as proposed by the proposed amendments filed herein, to said fifth finding of fact, by the defendants, all reference in said fifth proposed finding to the ownership of a certain three-stamp quartz mill situated on the Soo Quartz Mine, together with all the fixtures and appliances thereunto belonging, as well as all tools, boiler, hoist, cables, timbers and other appliances used in carrying on mining operations on said mining claim, for the reason that no lien exists on said quartz mill, or any of the personal property or machinery or other appliances, as mentioned in said fifth finding proposed by plaintiff, in favor of the plaintiff or his assignors, or either of them; and for the further reason that the court does not find as a matter of law that the said mill and all of said other property mentioned in said paragraph V of the findings of fact proposed by plaintiff was subject to any lien of plaintiff, or his assignors.

### XII.

The court erred in overruling defendants' objection to the sixth proposed finding of fact submitted by



plaintiff, for the reason that said finding states that W. L. Spalding employed the plaintiff and his assignors to perform the work mentioned in the complaint, and in the several liens filed in said cause, whereas the said complaint and the liens, and each of them, state that the said plaintiff and his assignors were employed by W. L. Spalding and Raymond Brumbaugh, members of the mining copartnership operating the Soo Quartz Mining Claim; and in overruling defendants' objection to that portion of said finding of fact which finds that the contract for labor to be performed by Mrs. H. H. Deck was for cooking, for the reason that services as cook are not lienable; and to that portion thereof which finds that the said Spalding contracted with William Ahlmark to pay \$5.00 a day and board for the team therein mentioned, for the reason that said services are not lienable in their nature, and for the further reason that the labors of said Ahlmark and his team are so commingled that they could not be separated and no lien would exist therefor.

### XIII.

The court erred in refusing to allow the proposed amendment to the seventh finding of fact proposed by plaintiff to the effect that there should be stricken from said seventh proposed finding of fact the statement therein contained that the several lien notices upon which the claims of plaintiff and his assignors are based contain "the name of the person by whom said claimant was employed, to-wit, W. L. Spalding,"

for the reason that the lien notices, copies of which are attached to the complaint herein, show on their face that the persons by whom each of said claimants was employed were W. L. Spalding and Raymond Brumbaugh, doing business under the name of Soo Mining Company.

#### XIV.

The court erred in refusing to sustain defendants' objection to the statement contained in the seventh finding of fact, wherein it is stated that the lien notices filed by the plaintiff and his assignors contain the name of the person by whom said claimants were employed, to-wit, W. L. Spalding, for the reason that each of the liens filed by the plaintiff and his assignors, and also the complaint herein, state that the names of the persons by whom said plaintiff and his assignors were employed were 'W. L. Spalding and Raymond Brumbaugh, composing the mining copartnership operating the Soo Mining Claim.

#### XV.

The court erred in overruling the defendants' objection to the eleventh proposed finding of fact submitted by the plaintiff, to the effect that the plaintiff S. A. Martin is entitled to a lien for the sum of \$357.50 upon the Soo Quartz Mining Claim, and upon the other property therein mentioned, for the reason that said statement is not a finding of fact, but a conclusion of law, and for the further reason that there is no law to justify such a finding, as the Act of the Alaska Legislature, under which said



liens were filed, is void.

#### XVI.

The court erred in overruling defendants' objection to the proposed findings numbered XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, and XXIV, that each of the persons named in said several paragraphs was entitled to lien upon the property described in each of said paragraphs, for the reason that each of said statements, contained in said several paragraphs, is a statement of a conclusion of law, and is not a statement of fact; and for the further reason that none of said lien claimants is entitled to a lien, as the Act of the Alaska Legislature, under which said liens are claimed, is void.

#### XVII.

The court erred in refusing to allow the amendment proposed by defendants to the findings of fact proposed by the plaintiff, numbered from XI to XXIV, inclusive, which proposed amendment would make it appear in each of said findings of fact that the person named therein as claimant is entitled to a lien only on the westerly 300 feet of the Soo Quartz Claim, to a depth of 100 feet, instead of upon the whole claim, as stated in each of said findings of fact proposed by the plaintiff.

#### XVIII.

The court erred in refusing to allow the amendment proposed by defendant to the twenty-fourth finding of fact proposed by the plaintiff, which



amendment required that there be stricken, from said twenty-fourth finding of fact proposed by plaintiff, the statement that William Ahlmark, one of the plaintiff's assignors, furnished a team of horses at the rate of \$5.00 a day between June 30 and October 8, 1913, or at any other time, or at all, for the reason that the services of such team are not lienable.

### XIX.

The court erred in making the first conclusion of law, which is as follows: "That all the claims of the various persons described in the findings of fact down to paragraph XXV constitute a lien upon the premises in said findings of fact described," for the reason that the law under which said liens were attempted to be enforced, being an Act of the Alaska Legislature, was void, and for the further reason that it clearly appears from the evidence that notices of non-liability were posted by the owners of said claim before said men went to work thereon, and that said notices remained posted during all the time said men were employed on said ground and that there was no lien in favor of said men, or any of them, for any work done on said ground.

### XX.

The court erred in entering the second conclusion of law, which was as follows: "That all of said liens were duly assigned and transferred to plaintiff herein, and that plaintiff is entitled to have all of said liens foreclosed herein and that the property described in plaintiff's complaint and in said findings

of fact be sold according to law to satisfy said liens," for the reason that there was not at the time said labor was performed, or at the time said findings of fact were signed, any law in existence permitting the filing of any of said liens, and the Act of the Alaska Legislature under which said liens were purported to be filed was void, and notice of non liability as prescribed by the general law of Alaska had been posted by the owners prior to the time said men therein referred to commenced work on said ground, and remained posted during all the time said men were employed on said ground, and said finding is against law.

### XXI.

The court erred in refusing to sustain defendants' objection to the first conclusion of law, for the reason that under the findings of fact proposed by plaintiff, the several liens claimed by plaintiff and his assignors are void, for the reason that none of said claims set forth the name of the person or persons by whom the said plaintiff and his assignors were employed, as stated in the finding of fact found by the court.

### XXII.

The court erred in refusing to sustain defendants' objection to the statement contained in the second conclusion of law proposed by plaintiff to the effect that plaintiff is entitled to have all the liens mentioned in the complaint foreclosed and the property described in the complaint sold, to satisfy said liens,

for the reason that under the statements made in the findings of fact, and the evidence produced in this case in behalf of the plaintiff, the said claims of lien are each and all void and of no effect, for the reason that the labor and services, for which the liens are claimed by the plaintiff and his assignors, according to the testimony herein, were not done and performed in the development or improvement of the Soo Quartz Mining Claim, but were done and performed in the course of carrying on mining operations in extracting ore, milling the same, and the ordinary working operations of the mine.

### XXIII.

The Court erred in admitting, over the objection of the defendants, plaintiff's exhibit No. 1, which was a lease from the Reliance Mining Company to W. H. Spalding, dated the 9th day of June 1913, and set forth in full in the bill of exceptions, which said lease covered all the Soo quartz mining claim described therein, as shown by defendant's exception No 1.

### XXIV.

The Court erred in refusing the defendants' motion to strike out all the testimony of Morton E. Stevens, relative to searching the records and finding no other lease of record than the lease referred to as plaintiff's exhibit No. 1, exception to which is noted in the bill of exceptions as defendants' exception No. 2.



## XXV.

The Court erred in refusing to grant defendants' motion for a non-suit at the close of the plaintiff's case, as shown in the bill of exceptions by defendants' exception No. 3.

## XXVI.

The court erred in entering judgment for the plaintiff in said action over the protest of the defendants therein.

## XXVII.

The Court erred in refusing to enter judgment in favor of defendants, as requested by said defendants on the ground that plaintiff has no lien, under the then existing laws in the Territory of Alaska, for the labor described in said lien notices and in said complaint.

## XXVIII.

The Court erred in adjudging that the personal property, described in plaintiff's complaint and in the liens attached thereto, should be sold in satisfaction of the judgment rendered in said cause, for the reason that the law of the Alaska legislature under which said proceedings were instituted and had was void, and there was nothing in the title of said act that related in any way to imposing a lien upon personal property for labor performed on the ground upon which the property was situated.

## XXIX.

The Court erred in ordering the personal property sold to satisfy the judgment in this case, for the rea-

son that there is no finding of fact or conclusion of law upon which such an order could be based, and the Court has failed to find that the alleged lien attached to any personal property described in said complaint.

XXX.

The Court erred in overruling defendants' objections to plaintiff's proposed findings of fact and conclusions of law.

XXXI.

The Court erred in refusing to grant defendant's proposed amendments to the findings of fact and conclusions of law.

XXXII.

The Court erred in entering judgment ordering all the Soo quartz mining claim to be sold in satisfaction of the judgment rendered in said cause.

XXXIII.

The Court erred in refusing to limit the judgment in said cause to the sale of the westerly three hundred feet of the Soo quartz mining claim to a depth of one hundred feet.

McGOWAN & CLARK,

JOHN K. BROWN,

Attorneys for Defendants W. L. Spalding and Reliance Mining Company.

Due service hereof admitted this 11th day of November 1915.

MORTON E. STEVENS,

Attorney for Plaintiff.

(Indorsed: "Filed in the District Court Territory of Alaska 4th Div. Nov. 11 1915 J. E. Clark Clerk By Sidney Stewart Deputy.")

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[Title of Court and Cause.]

**Petition for Appeal.**

The defendants, the Reliance Mining Company, a corporation, and W. L. Spalding, considering themselves, and each of themselves, aggrieved by the decree made and entered on June 1, 1915, in the above entitled cause, do hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of error which is filed herewith; and they, and each of them, pray that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for said Ninth Circuit.

Fairbanks, Alaska, November 11th, 1915.

McGOWAN & CLARK,

JOHN K. BROWN,

Attorneys for Defendants, Reliance Mining Company, a corporation, and W. L. Spalding.

Due service of the within petitions and receipt of a copy thereof are hereby acknowledged this 11th day of November 1915. Morton E. Stevens, Attorney for Plaintiff.

(Indorsed: "Filed in the District Court Territory



of Alaska 4th Div. Nov. 11 1915 J. E. Clark Clerk  
By Sidney Stewart Deputy.”)

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[Title of Court and Cause.]

**Order Allowing Appeal.**

Now on this 11th day of November, 1915, the same being one of the judicial days of the general March 1915 term, holden at Fairbanks, Fourth Judicial Division, Territory of Alaska, this cause came on to be heard upon the petition of the defendants, Reliance Mining Company, a corporation, and W. L. Spalding, for an appeal to the United States Circuit Court of Appeals for the Ninth Circuit; and the court being advised in the premises,

IT IS ORDERED that said defendants' appeal to the United States Circuit Court of Appeals at San Francisco be, and the same is hereby, allowed, upon the execution by the appellants of a good and sufficient bond to be approved by this court, in the sum of two hundred and fifty dollars (\$250.), said bond to be conditioned as a cost bond on appeal.

Done in open court this 11th day of November, 1915.

CHARLES E. BUNNELL,  
District Judge.

Entered in Court Journal No. 13, Page 342.

Due service of the within order allowing appeal and receipt of a copy thereof are hereby acknowledged this 11th day of November 1915. Morton E. Stevens, Attorney for Plaintiff.

(Indorsed: "Filed in the district Court Territory of Alaska 4th Div. Nov. 11, 1915. J. E. Clark Clerk By Sidney Stewart Deputy.")

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(Title of Court and Cause.)

**Bond On Appeal.**

KNOW ALL MEN BY THESE PRESENTS that we, Reliance Mining Company, a corporation, and W. L. Spalding, as principals, and United States Fidelity & Guaranty Company A Corporation, as sureties, are well and firmly bound unto S. A. MARTIN, the above named plaintiff, in the sum of two hundred and fifty dollars '(\$250.00), to be paid the said S. A. Martin, his executor or administrator, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our, and each of our, successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated this 12 day of November, 1915.

WHEREAS the above named defendants, Reliance Mining Company, a corporation, and W. L. Spalding, have taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the decree entered in the above entitled cause by the District Court of the United States for the Territory of Alaska, Fourth Division,

NOW, THEREFORE, the condition of this obligation is such that if the above named defendants, appellants, shall prosecute said appeal to effect,

and answer all costs, if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

RELIANCE MINING COMPANY,  
a corporation,

W. L. SPALDING

By JOHN A. CLARK,

One of his Attorneys

By JOHN A. CLARK,

Director and one of its Attorneys.

H. E. ST. GEORGE,

Secretary.

Principals.

UNITED STATES FIDILITY & GUARANTY CO.

Surety.

By WALLACE CATHCART,

Its Attorney in Fact.

ALBERT R. HEILIG,

Its Attorney in Fact.

Approved this 12th day of November 1915 Charles  
E. Bunnell District Judge.

(Indorsed: "Filed in the District Court 4th Div.  
Nov. 12 1915 J. E. Clark Clerk.")

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(Title of Court and Cause.)

**Citation On Appeal.**

The President of the United States of America,

To the above-named Appellee, and to Morton E.  
Stevens, Esquire, his Attorney, Greeting:

You are hereby cited to be and appear in the Unit-



ed States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, State of California, within thirty (30) days from the date of this citation, pursuant to an order allowing an appeal, made and entered in the above entitled cause, in which the Reliance Mining Company, a corporation, and W. L. Spalding are defendants and appellants, and S. A. Martin is plaintiff and appellee, to show cause, if any there be, why the decree and order made and entered in said action on June 1, 1915, as in said order allowing appeal is mentioned, should not be set aside and reversed, and why speedy justice should not be done to said appellants above named in that behalf.

Witness the Hon. Edward D. White, Chief Justice of the United States, on this 11th day of November, 1915, and the year of our independence the one hundred and fortieth.

Attest my hand and the seal of the above named Court this 11th day of November, 1915.

CHARLES E. BUNNELL,

District Judge.

Due service hereof admitted this 11th day of November 1915. Morton E. Stevens, Attorney for Plaintiff.

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(Title of Court and Cause.)

**Designation of Place for Hearing On Appeal.**

To the Hon. Charles E. Bunnell, Judge of the above

named court, and to the Plaintiff and his Attorney:

Come now the appellants, and pursuant to provision of the Act of Congress allowing appellants to designate the place of hearing of appeals, do hereby designate the City and County of San Francisco, State of California, as the place of the hearing of the appeal in the above entitled action.

McGOWAN & CLARK,  
JOHN K. BROWN,

Attorneys for Reliance Mining Company, a corporation, and W. L. Spalding, defendants and appellants

Due service of the within Designation of place for hearing on appeal and receipt of a copy thereof are hereby acknowledged this 11th day of November 1915.

MORTON E. STEVENS,  
Attorney for Plaintiff.

(Indorsed: "Filed in the District Court Territory of Alaska 4th Div. Nov. 11 1915. J. E. Clark, Clerk By Sidney Stewart Deputy.")

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(Title of Court and Cause.

**Order Extending Time Within Which to Perfect  
Appeal.**

On this day the above entitled cause came on to be heard before the judge of the above named court, on application of the defendants, Reliance Mining Company, a corporation, and W. L. Spalding, for an order extending the time within which to perfect their appeal herein; and no objections appearing and good cause being shown, and it ap-

pearing to the satisfaction of the court that the thirty (30) days' time allowed in the citation on appeal, within which appellants should prepare and file their record herein with the Clerk of the Circuit Court of Appeals at San Francisco, is insufficient for said purpose, now, therefore,

IT IS ORDERED that the time within which said appellants shall perfect said cause on appeal and docket and file the record thereof in the said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, be, and the same is hereby, enlarged and extended to and including the 1st day of February, 1916.

Done in open court this 11th day of November, 1915.

CHARLES E. BUNNELL,  
District Judge.

Entered in Court Journal No. 13, page 342.

Due service of the within order and receipt of a copy thereof are hereby acknowledged this 11th day of November 1915. Morton E. Stevens, Attorney for Plaintiff.

(Indorsed: "Filed in the District Court Territory of Alaska, 4th Div. Nov 11 1915 J. E. Clark Clerk By Sidney Stewart Deputy.")

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(Title of Court and Cause.)

**Praeceptum for Transcript.**

To J. E. Clark, Clerk of the above-entitled Court:

You will please prepare transcript of the record



in the above-entitled cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, upon the appeal heretofore perfected to said Court, and will include in said transcript the following papers and records, to-wit:

1. Complaint.
2. Motion of Reliance Mining Company to strike certain portions of complaint.
3. Motion of Reliance Mining Company to make complaint more definite and certain in certain particulars.
4. Stipulation of attorneys for appellants and appellee that motions of other defendants be omitted from the record.
5. Journal entry overruling motions of the defendants to strike portions of the complaint and overruling motions to make more definite and certain.
6. Demurrer of Reliance Mining Company.
7. Stipulation of attorneys for appellants and appellee that demurrers of other defendants be omitted from the record.
8. Journal entry overruling demurrers of all defendants.
9. Separate answer of Reliance Mining Company.
10. Separate answer of Raymond Brumbaugh and W. L. Spalding.
11. Reply.
12. Bill of exceptions and order settling and allow-

ing same.

13. Findings of fact and conclusions on law signed by the Court.
14. Judgment and decree.
15. Assignment of errors.
16. Petition for appeal.
17. Order allowing appeal and fixing amount of cost bond.
18. Cost bond on appeal.
19. Citation on appeal.
20. Designation of place for hearing appeal.
21. Order extending time within which to file appeal.
22. Praecipe for transcript.
23. Stipulation relative to printing of record.

This transcript to be prepared as required by law and the orders and rules of this Court and of the United States Circuit Court of Appeals for the Ninth Circuit, and to be filed in the office of the clerk of the said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, on or before the first day of February, A. D. one thousand nine hundred sixteen, pursuant to order of this Court extending time.

Fairbanks, Alaska, this 8th day of December, A. D. 1915.

JOHN K. BROWN,  
McGOWAN & CLARK,

Attorneys for Defendants and Appellants.

Due service hereof admitted this Dec. 29, 1915.

Morton E. Stevens, Attorney for Plff. & Appellee.

Indorsed: Filed in the District Court, Territory of Alaska, 4th Div. Dec. 29, 1915, J. E. Clark, Clerk, by Sidney Stewart, Deputy.

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**Clerk's Certificate of Record.**

United States of America,  
Territory of Alaska,  
Fourth Division,—ss:

I, J. E. CLARK, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of 326 pages, numbered from one to 326, inclusive, constitutes a full, true and correct transcript of the record on Appeal in cause No. 1995, entitled, S. A. Martin, Plaintiff, vs. W. L. Spaulding and RAYMOND BRUMBAUGH, mining copartners conducting business under the firm name of the SOO MINING COMPANY, W. L. SPAULDING, and the RELIANCE MINING COMPANY, a corporation, Defendants, and was made pursuant to and in accordance with the praecipe of the Plaintiff and Appellants, filed in this action and made a part of this Transcript, and by virtue of the citation issued in said cause, and is the return thereof in accordance therewith.

And I do further certify that the Index thereof, consisting of pages numbered i to iv, is a correct Index of said Transcript of record; also that the costs of preparing said transcript and this certifi-



cate, amounting to Ninety-seven Dollars and 10-100 (\$97.10) has been paid to me by Counsel for Plaintiff and Appellants in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, this 5th day of January, 1916.

(SEAL)

J. E. CLARK,  
Clerk of the District Court,  
Territory of Alaska,  
Fourth Division.

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No. 2741

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IN THE  
**United States Circuit Court of Appeals**  
For the Ninth Circuit

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W. L. SPALDING and THE RELIANCE  
MINING COMPANY, a Corporation,  
Appellants,

VS.

S. A. MARTIN,

Appellee.

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Appeal from United States District Court, Territory  
of Alaska, Fourth Division.

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**BRIEF ON BEHALF OF APPELLANTS**

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McGOWAN & CLARK,  
THOS. A. McGOWAN,  
JOHN A. CLARK,  
JOHN KNOX BROWN,  
Attorneys for Appellants.

Filed

MAR 3 - 1916

F. D. Monckton,  
Clerk





No. ....

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IN THE  
**United States Circuit Court of Appeals**  
**For the Ninth Circuit**

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W. L. SPALDING and THE RELIANCE  
MINING COMPANY, a Corporation,

*Appellants.*

vs.

S. A. MARTIN,

*Appellee.*

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**BRIEF ON BEHALF OF APPELLANTS**

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**STATEMENT OF THE CASE.**

This is a suit in equity, filed by S. A. Martin, for himself and as assignee of thirteen other laborers and other creditors of W. L. Spalding, to foreclose liens on the Soo quartz mining claim, one of a group of properties owned by the Reliance Mining Company, a corporation, and situate in the Fairbanks Mining and Recording Precinct, Fourth Judicial Division, Territory of Alaska. The suit was filed on 23 January, 1914 (erroneously stated in the summons as 1913) and contains twenty-seven causes of action, thirteen of said number being based upon labor performed by plaintiff and his assignors for a period

roughly speaking commencing in July 1913 and ending 8 October, 1913, represented by causes of action Nos. 1, 3, 5, 7, 9, 11, 13, 2nd 14, 16, 18, 20, 22, and 25, and thirteen causes of action for a period commencing with 9 October, 1913, and ending 10 November, 1913, and one cause of action No. 24 being for a period from 3 August, 1913 to 1 November, 1913; most of the men who worked during the first period having also worked during the second period, and having filed separate liens for each period, the reason therefor being fully explained hereafter.

The defendants Spalding, Brumbaugh, and the Reliance Mining Company, each appeared separately and moved to strike out certain portions of each separate cause of action (Tr., pp. 196, 212) and likewise to make each of said causes of action more definite and certain (Tr., pp. 213-214.) Separate demurrers were likewise interposed (Tr., pp. 216, 224) by defendants and likewise overruled and exceptions taken and allowed (Tr., p. 225).

Thereafter, separate answers were filed by the defendants, that of the Reliance Mining Company being a general denial of the essential allegations of each cause of action (Tr., pp. 225, 227) and setting forth as an affirmative defense that, prior to the commencement of any work described in the complaint, by plaintiff or his assignors, the defendant Reliance Mining Company, the owner of the property, caused to be posted upon said Soo quartz mining claim, at the times and places and in the manner prescribed by law, notices in writing, disclaiming any

responsibility for any debts contracted or incurred by any lessees or laymen working or operating on said Soo mining claim, and for any material furnished (Tr., pp. 227-228.) The answering defendants Spalding and Brumbaugh made general denial of all the essential allegations of the complaint (Tr., pp. 229, 231.)

Thereafter a reply was filed by the plaintiff, denying the affirmative matter set forth in the answer of the Reliance Mining Company (Tr. pp. 232, 233.)

The case then went to trial and findings of fact and conclusions of law were signed and filed, the Court finding in favor of plaintiff and against defendants Spalding and the Reliance Mining Company on the various causes of action based on the liens for labor performed prior to 8 October, 1913, and against the plaintiff upon all liens for labor performed subsequent to 8 October, 1913, and generally in favor of the defendant Brumbaugh and against the plaintiff.

Thereafter judgment was entered against the defendants Spalding and the Reliance Mining Company for the sum of \$4,125.25 and costs and ordering a foreclosure of liens upon *all* of the Soo quartz mining claim and the quartz mill, machinery, tools and plant situate thereon.

The action is based upon an act of the territorial legislature of Alaska, passed at its first session, held in 1913, and entitled "*An act to create, establish, and provide for liens on mines in favor of laborers and material-men, and repealing all acts and parts of acts in conflict herewith.*" being chapter 79 of the Session Laws of 1913



of the territorial legislature of Alaska, which said act is hereinafter set forth in full in the Argument.

The facts as developed at the trial, briefly stated, are as follows:

The Reliance Mining Company, a corporation, was, and is now, the owner of a number of quartz claims situate on Dome Creek, in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska, and on 13 May, 1912, in writing, leased to W. L. Spalding, John Letterman, and Clifford Post a portion of the Soo claim, one of the group, described as "*Beginning at the westerly end thereof on the line between said Soo claim and the Wild Rose claim and running thence easterly a distance of 300 feet along the vein or lode heretofore discovered and exposed n said ground, and extending vertically for a distance of 100 feet; the portion herein leased being a block 300 feet in length and 100 feet in depth on said vein or lode on which the lessees are now engaged in working together with the necessary tools, machinery, and buildings now situate on said property and belonging to lessor.*" (Tr., p. 253).

The term of the lease was from date thereof until 1 July, 1913, and one of the conditions of the lease was that

*"For and in consideration of services rendered by lessees in opening and developing said property, said lessees shall retain all the gold and other precious metals and minerals extracted from the portion of said ledge herein leased to them and need not pay to lessor any*

*part or portion thereof.*" (Tr., p. 253.)

Thereafter, by certain mesne conveyances, made prior to July, 1913, the lessee Spalding absorbed the interests of his co-lessees and became the sole owner of said lease (Tr., p. 253).

On 16 September, 1912, the lessor by resolution of its board of directors extended the term of said lease to 1 January, 1914 (Tr., pp. 258-259).

On 9 June, 1913, the Reliance Mining Company executed and delivered to said Spalding a new lease, covering all the Soo mining claim, the life of said lease being ten years from the date thereof and being expressly made subject to "*all outstanding leases on said mining claim or any portion thereof, whether the same have expired or expire at some time in the future, and the lease is accepted by said lessee expressly subject to the right of all persons now holding leases on said property or any part thereof*" (Tr., p. 239). Said lease reserved as rental and royalties to lessor ten per cent. of the gross output of the mine. (Tr., p. 241).

In the month of January, 1913, the Reliance Mining Company prepared three notices of non-liability, as prescribed by the laws of the Territory of Alaska then in force in Alaska (Compiled Laws of Alaska, sec. 694, quoted in full hereafter), disclaiming any liability for services rendered or supplies furnished to lessees, and duly signed the same by the name of the company and its duly authorized officers, and caused said notices to be posted on the ground (Tr., p. 249) where the work

was being carried on. All three of said notices remained posted in conspicuous places on said claim for many months after plaintiff and his assignors went to work thereon, and two at least remained so posted until after the lien claimants in this action had ceased labor on said claim, and were seen and read by the lien claimants (Tr., pp. 247, 248, 269, 261, 263, 264, 266, 267).

Subsequent to the time when said notices were posted, the legislature of Alaska, at its first session, enacted another lien law, as set forth hereafter in the Argument, under the terms of which act the owners of the property under lease are required to set forth, in any notices of non-liability posted by them, in addition to the data required by the provisions of the general law in force when the notices were originally posted, a statement that the lease had been *recorded* and giving the volume and page of the record where recorded, *the name of the lessee*, etc. (Act hereafter set forth in full). This act went into effect on *30 July, 1913*, after several of the lien claimants had begun to work and while the lessee Spalding was working under a *verbal* extension of the original lease granted by the resolution of the board of directors of the lessor corporation, not endorsed in the original lease that had expired on *1 July, 1913*, before any of the lien claimants had gone to work.

At the time of the execution of the original lease and the passage of the resolution extending the term thereof, there was no provision of the Alaska law requiring the recording of such a lease or the extension thereof, and an



oral lease or extension of a written lease for a period not exceeding one year was not forbidden by the statute of frauds then and now in effect in Alaska. (Compiled Laws of Alaska, sec. 1876, sub-div. 6. See Argument).

No new notices of non-liability were posted by the lessor corporation after the act of the legislature pertaining to liens went into effect on 30 July, 1913.

The work being performed on the mine during the period covered by the liens was *all on the northerly 300 feet by 100 feet in depth*, as provided by the original lease, and no royalties would be due to the lessors until after 1 January, 1914, unless lessee worked on some portion of the claim other than the part covered by the original lease, and this he had not done. Royalties would be due after 1 January, 1914, under the lease of June, 1913.

About 8 October, 1913, the lessee Spalding became involved in financial troubles and was unable to pay his employes and other creditors, and thereupon, under an agreement with his employees, Spalding and his employees, from that date until the mine was finally shut down in November, worked together as *partners*, the men to get all the gold extracted. It was for liens covering this period that the Court held that the men were not entitled to any liens, and no appeal has been taken from that portion of the judgment. The Court entered judgment for all the labor performed before 8 October, 1913, subsequent to July 29, 1913, including the labor of the cook, a Mrs. Deck, who did nothing but cook, and for

the use of a team belonging to William Ahlmark, and for all labor performed by any of the claimants regardless of whether it was *prospecting* or *development* work or *actual mining work*, and this appeal is taken from that portion of the decree foreclosing the liens for labor, etc, performed prior to 8 October, 1913, and ordering *all* of the claim and certain personal property sold to satisfy the same, which said decree was entered over the objections and exceptions of the defendants Spalding and the Reliance Mining Company.

The Honorable F. E. Fuller presided at the trial of the case and signed the findings of fact and conclusions of law, but resigned before judgment was signed. His successor, Honorable Charles E. Bunnell, signed the judgment.

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### ASSIGNMENT OF ERROR.

The Appellant relies upon the following error, viz:—

#### I.

The court erred in denying defendant's motion to strike paragraphs VI, VIII and IX of each of plaintiff's twenty-seven separate causes of action set forth in his complaint on file in said action.

#### II.

The Court erred in denying defendants' motion to strike plaintiff's Exhibits A, A 1, B, B 1, C, C 1, D, D 1, E, E 1, F, F 1, G, G 1, H H 1, I, I 1, J, J 1, K, K 1, L, L 1, M, N, N 1, attached to plaintiff's complaint and referred to in said separate causes of action.

## III.

The Court erred in refusing to grant defendants' motion to require plaintiff to make his complaint more definite and certain by setting forth in paragraph V of plaintiff's first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fourteenth (2), fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, and twenty-sixth causes of action, and each of them, what portion of the labor described therein was performed in running tunnels, what portion in opening stopes, what portion in working and extracting the ore from said mine and what portion in developing and improving said mine and what portion in milling the ore taken therefrom, and in what way said labor so alleged to have been performed was of the value to said mining property alleged therein.

## IV.

The Court erred in overruling the defendant's demurrer to the following causes of action contained in the complaint herein, and to each of said causes of action, to-wit: the first, third, fifth, seventh, ninth, eleventh, thirteenth, the second cause of action designated as the fourteenth, sixteenth, eighteenth, twentieth, twenty-second,, twenty-fourth and twenty-fifth.

## V.

The Court erred in overruling and refusing to allow defendants' proposed amendment to the first finding of



fact proposed by plaintiff, which amendment is as follows, to-wit:

“In paragraph I of the findings of fact proposed by the attorney for the above named plaintiff, amend the same so it shall read as follows: ‘That at all the times herein mentioned and up to and including the 8th day of October, 1913, the defendant W. L. Spalding was in possession of and prospecting, developing and mining the westerly 300 feet to the depth of 100 feet, of that certain quartz mining claim known as the Soo Quartz Mining Claim.’”

#### VI.

The Court erred in refusing to allow and overruling the defendants’ proposed amendment to the first finding of fact proposed by plaintiff, which amendment reads as follows: “Amend the last sentence thereof to read as follows: “And that the defendant W. L. Spalding, lessee as aforesaid, operated the westerly 300 feet to the depth of 100 feet of said mine, under the name of the Soo Mining Company.”

#### VII.

The Court erred in refusing to allow the defendants’ proposed amendment to the third finding of fact proposed by plaintiff, so that it will appear in said third proposed finding of fact that the word “quartz” written in pen and ink above the word “placer” was at the time of the trial of said action legible and could readily be distinguished.

#### VIII.

The Court erred in refusing to allow the proposed

amendment of the defendant to the proposed fourth finding of fact proposed by plaintiff, which amendment proposed to strike out all of the said fourth finding of fact reading as follows: "That the failure of the said Reliance Mining Company to post three notices in conspicuous places containing the name or names of the lessee or lessees, or other person or persons, operating said property, the court finds to be conclusive proof of the consent of said owner of said property that its interest in such mining property shall be subject to lien, or liens, for labor performed or material furnished in working, developing or operating on said mining claim." for the reason that the same states a conclusion of law and not any fact found upon the issues in said case.

#### IX.

The Court erred in refusing to sustain defendants' objection to the fourth finding of fact proposed by plaintiff, upon the ground that the same is not in accordance with the evidence in the case, and for the reason that said last paragraph of said finding does not state any facts found by the Court, but states a conclusion of law.

#### X.

The Court erred in refusing to allow the amendment proposed by defendants to the fifth finding of fact proposed by plaintiff, which amendment required that the said proposed finding of fact should state that the defendant W. L. Spalding was doing business as the Soo Mining Company, and was lessee of the westerly 300 feet of the Soo Quartz Claim, to a depth of 100 feet,

instead of the lessee of the whole claim, as appears in said finding proposed by plaintiff.

#### XI.

The Court erred in refusing to strike out in said fifth finding of fact, as proposed by the proposed amendments filed herein, to said fifth finding of fact, by the defendants, all reference in said fifth proposed finding to the ownership of a certain three-stamp quartz mill situated on the Soo Quartz Mine, together with all the fixtures and appliances thereunto belonging, as well as all tools, boiler, hoist, cables, timbers and other appliances used in carrying on mining operations on said mining claim, for the reason that no lien exists on said quartz mill, or any of the personal property or machinery or other appliances, as mentioned in said fifth finding proposed by plaintiff, in favor of the plaintiff or his assignors, or either of them; and for the further reason that the Court does not find as a matter of law that the said mill and all of said other property mentioned in said paragraph V of the findings of fact proposed by plaintiff was subject to any lien of plaintiff or his assignors.

#### XII.

The Court erred in overruling defendants' objection to the sixth proposed finding of fact submitted by plaintiff, for the reason that said finding states that W. L. Spalding employed the plaintiff and his assignors to perform the work mentioned in the complaint, and in the several liens filed in said cause, whereas the said complaint and the liens, and each of them, state that the said plaintiff



and his assignors were employed by W. L. Spalding and Raymond Brumbaugh, members of the mining copartnership operating the Soo Quartz Mining Claim; and in overruling defendants' objection to that portion of said finding of fact which finds that the contract for labor to be performed by Mrs. H. H. Deck was for cooking, for the reason that services as cook are not lienable; and to that portion of thereof which finds that the said Spalding contracted with William Ahlmark to pay \$5.00 a day and board for the team therein mentioned, for the reason that said services are not lienable in their nature, and for the further reason that the labors of said Ahlmark and his team are so commingled that they could not be separated and no lien would exist therefor.

### XIII.

The Court erred in refusing to allow the proposed amendment to the seventh finding of fact proposed by plaintiff to the effect that there should be stricken from said seventh proposed finding of fact the statement therein contained that the several lien notices upon which the claims of plaintiff and his assignors are based contain "the name of the person by whom said claimant was employed, to-wit, W. L. Spalding," for the reason that the lien notices, copies of which are attached to the complaint herein, show on their face that the persons by whom each of said claimants was employed were W. L. Spalding and Raymond Brumbaugh, doing business under the name of Soo Miningg Company.

## XIV.

The Court erred in refusing to sustain defendants' objection to the statement contained in the seventh finding of fact, wherein it is stated that the lien notices filed by the plaintiff and his assignors contain the name of the person by whom said claimants were employed, to-wit, W. L. Spalding, for the reason that each of the liens filed by the plaintiff and his assignors, and also the complaint herein, state that the names of the persons by whom said plaintiff and his assignors were employed were W. L. Spalding and Raymond Brumbaugh, composing the mining copartnership operating the Soo Mining Claim.

## XV.

The Court erred in overruling the defendants' objection to the eleventh proposed finding of fact submitted by the plaintiff, to the effect that the plaintiff S. A. Martin is entitled to a lien for the sum of \$357.50 upon the Soo Quartz Mining Claim, and upon the other property therein mentioned, for the reason that said statement is not a finding of fact, but a conclusion of law, and for one further reason that there is no law to justify such a finding, as the Act of the Alaska Legislature, under which said liens were filed, is void.

## XVI.

The Court erred in overruling defendants' objection to the proposed findings numbered XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, and XXIV, that each of the persons named in said several

paragraphs was entitled to lien upon the property described in each of said paragraphs, for the reason that each of said statements, contained in said several paragraphs, is a statement of a conclusion of law, and is not a statement of fact; and for the further reason that none of said lien claimants is entitled to a lien, as the Act of the Alaska Legislature, under which said liens are claimed, is void.

#### XVII.

The Court erred in refusing to allow the amendment proposed by defendants to the findings of fact proposed by the plaintiff, numbered from XI to XXIV, inclusive, which proposed amendment would make it appear in each of said findings of fact that the person named therein as claimant is entitled to a lien only on the westerly 300 feet of the Soo Quartz Claim, to a depth of 100 feet, instead of upon the whole claim, as stated in each of said findings of fact proposed by the plaintiff.

#### XVIII.

The Court erred in refusing to allow the amendment proposed by defendant to the twenty-fourth finding of fact proposed by the plaintiff, which amendment required that there be stricken, from said twenty-fourth finding of fact proposed by plaintiff, the statement that William Ahlmark, one of the plaintiff's assignors, furnished a team of horses at the rate of \$5.00 a day between June 30 and October 8, 1913, or at any other time, or at all, for the reason that the services of such team are not lienable.



## XIX.

The Court erred in making the first conclusion of law, which is as follows: "That all the claims of the various persons described in the findings of fact down to paragraph XXV constitute a lien upon the premises in said findings of fact described," for the reason that the law under which said liens were attempted to be enforced, being an Act of the Alaska Legislature, was void, and for the further reason that it clearly appears from the evidence that notices of non-liability were posted by the owners of said claim before said men went to work thereon, and that said notices remained posted during all the time said men were employed on said ground and that there was no lien in favor of said men, or any of them, for any work done on said ground.

## XX.

The Court erred in entering the second conclusion of law, which was as follows: "That all of said liens were duly assigned and transferred to plaintiff herein, and that plaintiff is entitled to have all of said liens foreclosed herein and that the property described in plaintiff's complaint and in said findings of fact be sold according to law to satisfy said liens," for the reason that there was not at the time said labor was performed, or at the time said findings of fact were signed, any law in existence permitting the filing of any of said liens, and the Act of the Alaska Legislature under which said liens were purported to be filed was void, and notice of non-liability as prescribed by the general laws of Alaska had been

posted by the owners prior to the time said men therein referred to commenced work on said ground, and remained posted during all the time said men were employed on said ground, and said finding is against law.

#### XXI.

The Court erred in refusing to sustain defendants' objection to the first conclusion of law, for the reason that under the findings of fact proposed by plaintiff, the several liens claimed by plaintiff and his assignors are void, for the reason that none of said claims set forth the name of the person or persons by whom the said plaintiff and his assignors were employed, as stated in the finding of fact found by the Court.

#### XXII.

The Court erred in refusing to sustain defendants' objection to the statement contained in the second conclusion of law proposed by plaintiff to the effect that plaintiff is entitled to have all the liens mentioned in the complaint foreclosed and the property described in the complaint sold, to satisfy said liens, for the reason that under the statements made in the findings of fact, and the evidence produced in this case in behalf of the plaintiff, the said claims of lien are each and all void and of no effect, for the reason that the labor and services, for which the liens are claimed by the plaintiff and his assignors, according to the testimony herein, were not done and performed in the development or improvement of the Soo Quartz Mining Claim, but were done and performed in the course of carrying on mining operations in extracting ore, milling the same, and the ordinary

working operations of the mine.

### XXIII.

The Court erred in admitting, over the objection of the defendants, plaintiff's exhibit No. 1, which was a lease from the Reliance Mining Company to W. H. Spalding, dated the 9th day of June, 1913, and set forth in full in the bill of exceptions, which said lease covered all the Soo Quartz Mining Claim described therein, as shown by defendants' exception No. 1.

### XXIV.

The Court erred in refusing the defendants' motion to strike out all the testimony of Morton E. Stevens, relative to searching the records and finding no other lease of record than the lease referred to as plaintiff's exhibit No. 1, exception to which is noted in the bill of exceptions as defendants' exception No. 2.

### XXV.

The Court erred in refusing to grant defendants' motion for a non-suit at the close of the plaintiff's case, as shown in the bill of exceptions by defendants' exception No. 3.

### XXVI.

The Court erred in entering judgment for the plaintiff in said action over the protest of the defendants therein.

### XXVII.

The Court erred in refusing to enter judgment in favor of defendants, as requested by said defendants, on the ground that plaintiff had no lien, under the then existing laws in the Territory of Alaska, for the labor described in said lien notices and in said complaint.



## XXVIII.

The Court erred in adjudging that the personal property, described in plaintiff's complaint and in the liens attached thereto, should be sold in satisfaction of the judgment rendered in said cause, for the reason that the law of the Alaska Legislature under which said proceedings were instituted and had was void, and there was nothing in the title of said act that related in any way to imposing a lien upon personal property for labor performed on the ground upon which the property was situated.

## XXIX.

The Court erred in ordering the personal property sold to satisfy the judgment in this case, for the reason that there is no finding of fact or conclusion of law upon which such an order could be based, and the Court has failed to find that the alleged lien attached to any personal property described in said complaint.

## XXX.

The Court erred in overruling defendants' objections to plaintiffs' proposed findings of fact and conclusions of law.

## XXXI.

The Court erred in refusing to grant defendant's proposed amendments to the findings of fact and conclusions of law.

## XXXII.

The Court erred in entering judgment ordering all the Soo quartz mining claim to be sold in satisfaction of the judgment rendered in said cause.

## XXXIII.

The Court erred in refusing to limit the judgment in said cause to the sale of the westerly three hundred feet of the Soo quartz mining claim to a depth of one hundred feet.

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**ARGUMENT.**
**CITATIONS.**

Memorandum:—The “General Mechanic’s Lien Law,” hereinafter referred to, certain sections of which are quoted in full or in part, is also found in Vol. I, Fed. Stat. Ann., pages 282-285, being Chap. 28, Alaska Civil Code; also 31 Stat. L. pp. 534-537.

The “Dump Lien Law” hereinafter referred to but not quoted was an Act of Congress, approved June 25, 1910, Chap. 422; Fed. Stat. Ann. Supp. 1912, pp. 14-17; 36 Stat. L. 848-851.

The sections of the Comp. L. of Alaska relating to liens on personal property hereinafter quoted are part of Chap. 29. of Civil Code for Alaska, Vol. 1, Fed. Stat. Ann. pp. 286-289; 31 Stat. L. 537-541.

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**Act of the Alaska Legislature.**

The “Act of the Alaska Legislature” hereinafter referred to being Chapter 79, Session Laws of Alaska for 1913, is as follows:

AN ACT to create, establish and provide for liens on mines in favor of laborers and materialmen, and repealing all acts and parts of acts in conflict herewith. Be it enacted by the Legislature of the Territory of Alaska:

Section 1. Every person who shall perform labor upon, or furnish material for the working or development of any mine, lode, mining claim or deposit yielding or containing coal, metal or mineral of any kind, or for the working or development of any such mine, lode, mining claim or deposit in search of any coal, metal or mineral; and any person who shall do work upon or furnish materials for any shaft, tunnel, incline, adit, drift or other excavation designated for the use, or working, or draining of any such mine, lode, mining claim or deposit; and any person who aids or assists in the kind of work hereinbefore described by his labor as cook, engineer, fireman, or in cutting or delivering wood used or intended to be used in such work; and any person who shall do work on or furnish material for any road, tramway, trail, flume, ditch or pipe line, building, structure or superstructure, dredge, steam shovel or machinery used for, or in connection with the working or development of any such mine, lode, mining claim, deposit, shaft, tunnel, incline, adit, drift or other excavation; and any person who shall perform labor or service in freighting or packing any material or supplies for the use, working, or development of any such mine, lode, mining claim, deposit, road, tramway, trail, dredge, steam-shovel, machinery, flume, ditch or pipe line, building, structure or superstructure, shall have a lien upon such mine, lode, mining claim, deposit, road, tramway, trail, flume, ditch or pipe line, building, structure, superstructure, dredge, steam shovel or machinery to secure to him the payment for the work or labor done, or material furnished, which lien shall attach in every case to such mine, lode, mining claim, deposit, and the ore, gold bearing earth, rock, gravel, sand, gold, gold dust or other precious metals mined, taken and extracted from



such mine, lode, mining claim, deposit, shaft, tunnel or other excavation, road, tramway, trail, flume, ditch or pipe line, building, structure, superstructure, dredge, steam-shovel or machinery owned or used in connection with the operation and development of the same.

Sec. 2. When two or more mines, lodes, mining claims or deposits are owned or claimed by the same persons and worked through a common shaft, tunnel, incline, adit, drift, or other excavation, or over one tram, or at one mill or other reduction works, then all the mines, lodes, mining claims or deposits so worked, and all roads, tramways, trails, flumes, ditches or pipe lines, buildings, structures, superstructures and all machinery, used or worked in connection therewith, shall, for the purpose of this act, be deemed one mine.

Sec. 3. The provision of this act shall not be deemed to apply to the owner or owners of any mine, lode, mining claim, or deposit, shaft, tunnel, incline, adit, structure, superstructure, dredge, steam shovel or machinery when the same shall be worked by a lessee or lessees or other person or persons other than the owner; provided, the lessor or lessors or other person or persons other than the owner of any such mine, lode, deposit, shaft, tunnel, incline, adit, drift or other excavation, millsite or mill, shall have recorded in the office of the recorder wherein any such mining property is situated, a copy of such lease or any other instrument, before the work shall have begun on such property; Provided further, that the owner or owners of any such mine or mines, lodes, deposits, shaft, tunnel, incline, adit, drift, or other excavation, mill or millsite, before the work shall have begun on such property, shall have posted at not less than three conspicuous places upon such mine, lode, deposit, shaft, tunnel, incline, adit, drift, or other ex-

cavation, mill or millsite, at or near the place thereon where the same is being worked or developed, a notice in writing, signed by the owner or owners of such property, stating the name or names of the lessee or lessees or other person or persons other than the owner operating said property, and that the owner or owners thereof will not be responsible for any debt or debts contracted by the lessee or lessees or other person or persons other than the owner, in connection with the working, operation or development of such property, or for any work, improvement or development thereon under such lease or other instrument. The failure of any owner or owners of such property to post the notices above provided for, shall be deemed conclusive proof of the consent of such owner or owners that his or their interest in such mine shall be subject to any lien filed under the provisions of this act; provided, however, that the person entitled to a lien under the provisions of this act for labor performed shall have a lien on the leasehold interest and on all of the ores and mineral bearing rock, earth, dirt, gold and gold dust and other precious minerals mined, taken and extracted by the lessee.

Sec. 4. The lien provided for in this act is a preferred lien, and is prior to any lien, and no sale, transfer, mortgage or assignment of any mine, mining claim or other property, the subject to the lien under this act, shall divert or defeat the lien thereon, except as hereafter provided, but no lien provided for in this act shall bind any such mine, lode, deposit, shaft, tunnel, incline, adit, or other excavation, or any road, tramway, trail, flume, ditch, pipe line, building, structure, superstructure, dredge, steam-shovel or machinery used for or in connection with the working and development of any such mine, lode, mining claim or deposit for a period longer than six months



after the same shall have been filed, unless suit be brought in a proper court within that time to enforce the same; or if a credit is given, within six months after the expiration of such credit; but no lien shall be continued in force for a longer time than one year from the time work is completed by any agreement to give credit.

Sec. 5. The lien provided for in this act shall not be prior to a mortgage executed in good faith and for a valuable consideration and recorded in the office of the recorder for the precinct in which the property covered by said lien is situated, in accordance with the recording laws now in force in the Territory of Alaska: Provided, however, that the mortgagee shall post or cause to be posted upon the mining premises or property, notices of his said mortgage, in the same manner as notices of non-liability are to be posted under the provisions of this act, which notices shall contain and state the date and amount of the mortgage, the volume and page of the records where recorded, and a description of the property mortgaged, but the priority of such mortgage shall only attach from the time that notice thereof is posted upon the mine or mining premises or property, and then only as to such labor performed or material furnished after the date of such posting and recording. The provisions in this act as to the priority of liens therein mentioned, shall not apply to any leasehold interest, or to the ore, earth, rock, gravel, sand, gold, gold dust or other precious minerals extracted from any mine, lode, mining claim, deposit, shaft, tunnel, incline, adit, drift or other excavation by any lessee or lessees or other person or persons not the owner of such property; and such lien shall be prior to and preferred over any deed, mortgage, attachment or any other lien whatsoever, whether the same was given or made prior to the per-



formance of such labor or not.

Sec. 6. All acts and parts of acts in conflict herewith are hereby repealed to the extent of such conflict.

Approved, April 30, 1913.

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### **Citations from Compiled Laws of Alaska.**

Sec. 691. Every mechanic, artisan, machinist, builder, contractor, lumber merchant, laborer, teamster, drayman, and other persons performing labor upon or furnishing material of any kind to be used in the construction, development, alteration, or repair, either in whole or in part, of any building, wharf, bridge, flume, mine, tunnel, fence, machinery, or aqueduct, or any structure or superstructure, shall have a lien upon the same for the work or labor done or material furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration, or repair, in whole or in part, of any building or other improvement as aforesaid shall be held to be the agent of the owner for the purposes of this code.

Sec. 692. The land upon which any building or other improvement as aforesaid shall be constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof (to be determined by the judgment of the court at the time of the foreclosure of such lien), and the mine on which the labor was performed or for which the material was furnished shall also be subject to the liens created by this code if, at the time the work was commenced or the materials for the same had been commenced to be furnished, the land belonged to the person

who caused the building or other improvement to be constructed, altered, or repaired; but if such person owned less than a fee-simple estate in such land, then only his interest therein shall be subject to such lien; and in case such interest shall be a leasehold interest, and the holder thereof shall have forfeited his rights thereto, the purchaser of such building or improvement and leasehold term, or so much thereof as remains unexpired at any sale under the provisions of this code, shall be held to be the assignee of such leasehold term, and as such shall be entitled to pay the lessor all arrears of rent or other money and costs due under the lease, unless the lessor shall have regained possession of the land and property, or obtained judgment for the possession thereof, prior to the commencement of the construction, alteration, or repair of the building or other improvement thereof; in which event the purchaser shall have the right only to remove the building or other improvement within thirty days after he shall have purchased the same; and the owner of the land shall receive the rent due him, payable out of the proceeds of the sale, according to the terms of the lease, down to the time of such removal.

Sec. 693. A lien created by this code upon any parcel of land shall be preferred to any lien, mortgage, or other incumbrance which may have attached to the land subsequent to the time when the building or other improvement was commenced, or the materials were commenced to be furnished and placed upon or adjacent to the land; also to any lien, mortgage, or other incumbrance which was unrecorded at the time when the building, structure, or other improvement was commenced, or other materials for the same were commenced to be furnished and placed upon or adjacent to the land; and all liens created by this code upon any building or other improvements shall

be preferred to all prior liens, mortgages, or other incumbrances upon the land upon which the building or other improvement shall have been constructed or situated when altered or repaired; and in enforcing such lien, such building or other improvement may be sold separately from the land, and when so sold the purchaser may remove the same, within a reasonable time thereafter, not to exceed thirty days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal: *Provided*, if such removal be prevented by legal proceedings, the thirty days shall not begin to run until the final determination of such proceedings in the court of first resort or the appellate court if appeal be taken.

Sec. 694. Every building or other improvement mentioned in section six hundred and ninety-one, constructed upon any lands with the knowledge of the owner or the person having or claiming any interest therein; and the interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this code, unless such owner or person having or claiming an interest therein shall, within three days after he shall have obtained knowledge of the construction, alteration, or repair, give notice that he will not be responsible for the same, by posting a notice in writing to that effect in some conspicuous place upon the land, or upon the building or other improvement situated thereon.

Sec. 695. It shall be the duty of every original contractor, within sixty days after the completion of his contract, and of every mechanic, artisan, machinist, builder, lumber merchant, laborer, or other person, save the original contractor, claiming the benefit of this code, within thirty days after the completion of the alteration or repair thereof, or after he has



ceased to labor thereon from any cause, or after he has ceased to furnish materials therefor, to file with the recorder of the precinct in which such building or other improvement, or some part thereof, shall be situated, a claim containing a true statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the materials, and also a description of the property to be charged with the lien sufficient for identification, which claim shall be verified by the oath of himself or of some other person having knowledge of the facts.

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Sec. 703. The words "building or other improvement," wherever the same are used in this chapter, shall be held to include and apply to any wharf, bridge, ditch, flume, tunnel, fence, machinery, aqueduct to create hydraulic power, or for mining or other purposes, and all other structures and superstructures, whenever the same can be made applicable thereto; and the words "construction, alteration, or repair," whenever the same are used herein, shall be held to include partial construction, and all repairs done in and upon any building or other improvement.

Sec. 705. Any person who shall make, alter, repair, or bestow labor on any article of personal property at the request of the owner or lawful possessor thereof shall have a lien upon such property so made, altered, or repaired, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed and the material he has furnished, and such person may hold and retain possession of the same until such just and reasonable charges shall be paid.

Sec. 706. Any person who is a common carrier, or who shall, at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another \* \* \* shall have a lien upon such property for his just and reasonable charges for the labor, care and attention he has bestowed and the food he has furnished, and he may retain possession of such property until such charges be paid.

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Sec. 709. Every person performing labor upon, or who shall assist in obtaining or securing saw logs, spars, piles, or other timber shall have a lien upon the same for the work or labor done upon or in obtaining or securing the same, whether such work or labor was done at the instance of the owner of the same or his agent. The cook in a logging camp and any and all others who may assist in or about a logging camp shall be regarded as a person who assists in obtaining or securing the saw logs, spars, piles, or other timber mentioned herein.

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## Argument of Assignment of Error.

### I.

The principal question presented by appellants' assignment of errors is the validity of the act of the Alaska legislature, approved 30 April, 1913, in effect 30 July, 1913, chapter 79, Session Laws, 1913.

The question is presented by assignments of error 4, 8, 11, 12, 15, 16, 18, 19, 20, 22, 25, 27, 28, 32, and 33.

If said act is void, for the reasons set forth hereafter, the other questions are only of secondary importance, but appellants and the bar of Alaska would appreciate rulings on said question, for future guidance in interpreting

and administering the existing laws and acts that the Legislature of Alaska may hereafter enact.

*Appellants submit that the Act in question is void for the following reasons, to-wit:*

(1) That more than one subject is treated in the Act, contrary to the prohibition of section 8 of the Organic Act of the Territory of Alaska.

(2) That the subject of the Act is not set forth in its title.

(3) That the Act is not complete in itself, nor by any reasonable intendment can it be made so by reference to any valid acts in force in Alaska.

(4) That the Act is retrospective and retroactive, and does not contain any saving clause exempting from its provisions contracts entered into, rights acquired, or interests vested under existing valid laws then in force.

(5) That it is in violation of section 10 of article I of the Constitution of the United States, in that it impairs the obligations of existing contracts.

(6) That it is in violation of the 5th amendment to the Constitution of the United States, in that it confiscates property without due process of law.

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**(1) More than one subject is embraced in the Act.**

(a) The Act provides for liens on *mines*; also other excavations that might reasonably be included within the meaning of the term.

(b) It provides for liens on roads, tramways, trails, flumes, ditches, pipe-lines, buildings, structures, or super-



structures, all of which may be treated as real estate or appurtenances, by reason of being affixed to the soil, or being part thereof, but which may have no immediate connection with a mine or be in proximity thereto, and which may be on the property of others than the owner of the mine.

(c) It provides for liens on personal property, such as machinery, steam-shovels, dredges, etc.

(d) It provides for liens on gold and gold dust and other products of the mine after they have been segregated therefrom and have become personalty.

(e) It provides for liens in favor of cooks, wood-choppers, teamsters, and others, not heretofore classed as *laborers*.

(f) It provides for subrogating the rights of mortgagees, vendees, assignees, and other encumbrancers, to the liens of laborers and other persons rendering service.

(g) It provides for liens in favor of material-men who furnish material for the various classes of work described in the Act.

(h) It provides for the recording of leases not heretofore required to be recorded.

(i) It provides for the repealing of acts in conflict therewith.

The Organic Act creating the Alaska Legislature, approved by Congress 24 August, 1912, contains the following provision:

"Sec. 8. \* \* \* No law shall embrace more than one subject, which shall be expressed in its title."

**(2) The subject of this act is not set forth in the title thereof.**

The title is: "*An act to create, establish, and provide for liens on mines, in favor of laborers and material-men, and repealing all acts and parts of acts in conflict therewith.*"

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**A. Beneficiaries.**

It is true the act is comprehensive enough to cover the *creating* and *establishing* of liens on *mines*. "Mines" is probably sufficient to cover the mine itself, the mining claim, lodes, and deposits worked as a mine. The shafts, tunnels, inclines, adits, drifts, and other excavations, are probably included therein as they are the usual means by which mines and mining claims are worked. The words "provide for," as used in the title of the act, we take to be practically synonymous with "create" and "establish," for when a lien is "created" or "established," the method of procedure for vesting the same may be provided for. If "provide for" means the method of crystalizing the lien by filing notice, etc., then that is superfluous, as those provisions are omitted from the act. *Laborers* who work in any of the various excavations by which the values are extracted from the ground are likewise sufficiently described, as well as material-men who furnish supplies for making the various excavations effective for the purposes for which they are intended or safe for the laborers employed therein.

The Courts have held that mechanics' lien laws shall be liberally construed as respects the property to be cov-

ered thereby and as to the enforcement of the lien after it has attached, but they must be *strictly* construed as to the *persons* entitled to a lien and the *things done* to obtain a lien. 2 Sutherland on Stat. Constr., (2 ed., p. 1254,) sec. 690, and cases there cited.

Measured by this standard, the word "laborer" could hardly be held to have a broader meaning than the generally accepted one, as shown by the act itself, for, in addition to the use of the word "laborer," as mentioned in the title, the act, by express terms, extends the benefits of the act to "engineers," "firemen," "cooks," "wood-choppers," "wood-haulers," "freighters," and "packers," and by implication to carpenters and their assistants, pipe-fitters, dredge-masters, winch-men, and other employees, who must possess some skill or ability in their particular lines, none of whom (with the possible exception of wood-cutters) could be classified under the general heading of "laborers," either by general intendment or by their own conception of the dignity of their several callings, or by the clearly expressed intention of the Legislature.

The Act might be construed, and an attempt is now being made to extend its provisions to the employees of an independent contractor, who, for a specified sum per cord, agreed to deliver wood to a mine; this, in spite of the fact that the contractor has been paid in full. To our minds, it appears clear that the title of the Act does not, by the most liberal construction, designate or classify in any comprehensive manner, or by such general terms as might be deemed to include all or a material part, the



*beneficiaries* described in the text of the Act.

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## B. Property.

The Act does not designate in its title, all, or a material part, of the *property* to be covered, in addition to the property that could reasonably be construed to be covered by the word "mines." As above set forth, it extends the burden to various other objects that are not real in their nature, and to various interests in real estate, that may not be, and probably are not, connected with the mine itself, and which no reasonable person with any knowledge of the English language would expect to be covered by the word "mine" as used in the title of the Act, and which the Legislature attempts to include as a part of a "mine" by enactment.

Being a Legislature of limited powers, we do not believe that their power extends to repealing the dictionaries or the Courts' judicial interpretation of the meaning of words. The Standard Dictionary defines "mine" as follows: "(1) *An excavation, properly underground, for digging out some useful product, as ore, metal, or coal.*

(2) *Any deposit of such material suitable for excavating and working; as, a placer mine.*"

The Act attempts to include as a part of a "mine" other realty, such as *roads, trails, tramways, flumes, ditches, and pipe-lines*, some of which may or may not be realty, and all of which may not be in close, or in any, proximity to the mine; also buildings, structures, and superstructures, which may or may not be on the "mine," and which may be, and many times are, on property belong-

ing to persons other than the owner of the "mine," or on property not covered by the lease. It attempts to include property that cannot, by any strained construction, be classed as anything but personalty, to-wit, *dredges, steam-shovels, and machinery*, no mention of which is made in the title of the Act.

The Supreme Court of Idaho, in the case of *State vs. Coffin*, 74 Pac. 693, syllabus 5, says:

"The Legislature cannot in the title of an act use language which, in the ordinary and usual acceptation of the terms thereof, would imply and convey one meaning, and in the body of the act declare that such language means the reverse."

On page 967, *Id.*, the Court quotes Mr. Justice Campbell of the Supreme Court of Michigan as follows:

"The purpose of the statute, so far as it is lawful, must be determined by its title; and it is not competent to use one title and explain in the body of the act that it means something else. The constitutional rule requiring the title to contain the object of the act would be a farce if there was any power in the legislature to give new meaning to language."

"The title of a legislative act must be, in a sense, an index to its subject matter; that it is so closely related that it may be construed so as to bring it within the body of the law, will not be sufficient."

*Hearn vs. Louttit*, (Ore.), 72 Pac. 132, 133.

*Lewis vs. Dunne*, (Cal.), 66 Pac. 478.

Nothing can be determined from the act itself as to what particular statutes are repealed.

"Repeals of statutes by implication may not be worked

piecemeal."

State vs. Mitchell, 104 Pac. 792.

To make the act in question effective there must be a repeal by express terms of lien statutes which affected persons other than laborers.

Comp. Laws of Alaska, sec. 691.

Northern Pacific Express Co. vs. Metschan (Ore.),  
90 Fed. 80.

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*The Act is so vague, uncertain and ambiguous as to render it void.*

The laws of Alaska, as they now exist, give to persons doing work on personalty of the character therein described, by way of repairs, improvements, etc., a lien thereon for services rendered. (See sec. 705, Comp. Laws of Alaska.) The act of the Legislature gives a lien on the same personalty to a man working on a pipe-line, a ditch, a road, a trail, a flume, etc., being constructed perhaps twenty miles away, or to a person cutting wood for some wood-hauler. In the event of a conflict between the liens, which would be deemed superior?

The general mechanic's lien law in effect in Alaska when the act of the Legislature went into effect, and not expressly repealed, as it is not in conflict with the act under discussion, since it provides for liens of others than miners and on other structures: gives to laborers, carpenters, etc., constructing a building, or any other structure, such as a flume, ore-bunkers, a boiler-house, etc., a lien thereon and on the ground upon which such structure stands, as security for their wages. (Id., sec.



691.) The act of the Legislature gives to the man underground or the teamster hauling wood to the mine a lien thereon also. In the event of a conflict of liens, how shall their priority be determined?

Section 1 of the Act in question gives a lien to all of the beneficiaries named therein on, among other things, all of the mineral products extracted from the ground. The latter part of section 3 of the Act limits the lien on the mineral products to those performing *labor* when the ground is worked by a *lessee*. The latter part of section 5 of the Act then provides in substance that the lien of *all* of the claimants under the act upon the mineral products shall be superior to all other liens or claims. Which section shall prevail? Who can ascertain from reading the Act which of the beneficiaries named therein would have a lien on the mineral products if the ground is worked by a lessee?

The list of conflicts and inconsistencies might be extended indefinitely, and the foregoing are given merely as illustrative of the hopeless confusion that has arisen by reason of the ambiguous language used and the indefiniteness and uncertainty of the act in question; an ambiguity and uncertainty that, to our minds, renders it entirely void.

The Act also attempts to cover the mineral products extracted from the earth, without mentioning them in the title.

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### C. Contractual Rights.

It attempts to regulate the acts and alter the rights

and remedies of vendees, mortgagees, etc., without mentioning them in the title, and to make their vested contractual rights subordinate to liens acquired subsequent to the vesting of those rights.

No mention is made in the title in regard to the changes proposed in the recording laws as then in force in Alaska, although the Act requires the recording of leases, which theretofore were not necessarily required to be recorded, and nothing in the title of the Act would put any person on his guard in that respect.

We are well aware of the various decisions of the Courts which declare that, if a void part of an act can be separated from the valid part, and the valid part presents anything like a symmetrical whole, capable of being intelligently interpreted and enforced, then the valid part would be upheld. Sutherland on Stat. Constr., (2 ed., p. 581), sec. 299.

Cooley's Constitutional Limitations. (7th ed.), p. 312, expresses the rule as permitting the upholding of the valid portion of the law if, after eliminating the void part, it would "*leave a complete and sensible enactment which is capable of being executed.*" But, after diligent effort, we are unable to segregate from the mass of inconsistent, contradictory, and vague provisions, any appreciable part on any one subject that could be fairly declared to be an intelligible, complete, concrete expression of the legislative will, and there are no means provided for "executing" the act.

Consistent with the rule above stated and equally important and particularly applicable to the case at bar

is the other rule laid down in *Sutherland*, Stat. Constr., sec 297, Vol. 1, pages 579-580:

"It may be laid down generally as a sound proposition that one part of a statute can not be declared void and leave any other part in force, unless the statute is so composite, consisting of such separable parts, that, when the void part is eliminated, another living, tangible part remains, capable, by its own terms, of being carried into effect consistently with the intent of the legislature which enacted it, in connection with the void part." "If the legislative purpose as expressed in the valid portions of the act can be accomplished independently of the unconstitutional portion *and considering the entire act, it can not be said that the legislature would not have passed the valid portion had it been known that the invalid portion must fail*, effect will be given to so much as is good." (Citing *English vs. State*, 31 Fla., 340, 12 So. 689).

"On the other hand, *if it is obvious that the legislature did not intend that any part should have effect, unless the whole, including the part held void, should operate, then holding a part void invalidates the entire statute.*" "If all the provisions of an act are so interwoven as to be incapable of distinct separation, *or are of such a character that it can not be said that the legislature intended that the valid part should be enforced if the other parts fail, the entire law will be held to be invalid.*" (Citing 35 Atl., 787; 37 Atl., 949). "If the obnoxious section or part is of such import that the other sections or parts without it would cause results not contemplated or desired by the legislature, then the entire statute must be held inoperative." (Citing *Connolly vs. Union Sewer Pipe Co.*, 134 U. S.,



540-565, 22 S. C. R., 431, 46 L. Ed., 679.)

Applying the foregoing rule to the case at bar, the situation is this:

(a) Before the passage of the Act in question, sections 691-692 of the Compiled Laws of Alaska, hereinbefore quoted, were in force in Alaska, giving mechanics, artisans, machinists, builders, contractors, lumber merchants, laborers, teamsters, draymen, and "other persons" (which has been held to include miners) a lien on the mine itself or a "structure" thereon (as defined in sec. 703, *Supra*) for their wages for services rendered, and for the value of supplies furnished, always presuming that non-liability notices have not been posted.

(b) The dump lien law (Compiled Laws of Alaska, sec. 164, 36 Stat. L. p. 848) gave miners, laborers, cooks, engineers, firemen, woodcutters, and wood-haulers a lien on the "winter dump," or any dump of mineral-bearing earth and gravel produced in whole or in part by their labor, as well as on *all* the mineral products when cleaned up and separated from the gravel and earth, and *gave their liens precedence over all mortgages, attachments, and other encumbrances.*

(c) Persons performing labor upon, or who should make, alter, or repair any machinery, had their lien thereon, with the right to hold possession thereof as security therefor. (Compiled Laws of Alaska, sec. 705.)

(d) Freighters who transport any personal property, such as wood, at the request of the owners, had a lien thereon for their charges. (*Id.*, Sec. 706.)

(e) Persons (woodcutters) securing saw-logs, spars,

piles, or *other timber* had a lien thereon for services rendered. (Id., sec. 709.)

(f) Liens provided for under the general mechanic's lien law were superior to *prior* executed mortgages, attachments, and other incumbrances, *not recorded* when the labor was *commenced* and to all subsequently acquired liens (id., sec. 693), the act containing a saving clause to protect existing contracts at the time of its passage. (Id., sec. 704).

(g) Liens provided for under the "dump lien law" were superior to *all* encumbrances on the dump and its mineral products, with a saving clause to protect existing rights. (See citations above.)

Bearing in mind the foregoing existing lien laws, it is obvious that the intent of the legislature was to change such laws, and the changes they desired to make are best ascertained by considering the new law passed by them now under discussion, and therefrom we find the following proposed changes:

(1) An increase in the scope of the Act as to the *property* covered; to-wit: (a) *realty* such as trails, ditches, pipe-lines, roads, flumes, tramways, structures, etc, not necessarily on the *mine* being worked and (b) *personal property*, such as dredges, steam-shovels, mills, reduction works, and any machinery used in connection with the industry, part or all of which might not be on any part of the mine proper.

(2) An increase in the number and character of the *beneficiaries* who were to have a lien on the mine; to-wit: (a) woodcutters, teamsters, packers, dredge-masters.

and a number of others, who had therefore had a right to specific liens on the particular article upon which they performed their labor; and (b) persons working on ditches, pipe-lines, roads, trails, tramways, in mills, etc., who formerly had no lien on the mine itself.

(3) It required the recordation of leases.

(4) It required changes in the notices of non-liability.

(5) It subrogated existing contracts to the rights of lien-claimants.

(6) It attempted to extend to the mineral extracted from quartz-claims the provisions theretofore applicable to placer-claims only, as provided in the "dump lien law" above referred to.

(7) It extended the right to acquire a lien for labor performed in carrying on actual *mining* operations, whereby the very essence and substance of the mine is taken away, as distinguished from *prospecting and development* work.

As heretofore demonstrated, the Act, to our minds, is void, so far as the first six changes above enumerated are concerned; either because of the defective title, or because the Act embraces more than one subject; or because of it being in violation of section 10 of article I of the Constitution of the United States, or in violation of the Fifth amendment to the Constitution, or because of being retroactive and retrospective in its action, as hereinafter discussed.

If our conclusions are correct and if the seventh proposed change above set forth is valid, then the non-liability notices posted by the appellants in this case



would protect their interests in the ground; and furthermore, it is obvious that the act would not have been passed for that purpose alone. The dump lien law, heretofore referred to, already covers the subject to a limited extent.

Reasoning from the foregoing and applying the rule laid down in section 301 of Sutherland on Statutory Construction, "*Where all the provisions of an act are connected as parts of a single scheme, the incidental or dependent provisions must fall with the failure of the main purpose.*" no other conclusion could be reached than that the enactment into law of the *void* portion of the statute in question was the *moving*, if not the *sole* reason, for its enactment, and had it not been desired to enact the *void* portions, *no* law would have been passed. The valid portions, if any there be, obviously would not have been enacted alone, as the subject was already treated and covered by existing laws. Sutherland on Statutory Construction, 2 ed., secs. 301, 302, 303, 305, 307, and cases there cited.

"Where one portion of an act has been declared unconstitutional or void, the presumptions are generally against the balance being allowed to stand as an independent act." Skagit County vs. Stiles, (Wash.) ,39 Pac., 116; Sutherland on Stat. Constr., 2 ed., vol. 1, p. 583, sec. 297.

Did it purport to be an amendatory act, some of its provisions might be more readily interpreted and some of its glaring inconsistencies might be glossed over, as other provisions of the amended act, not repealed, might be referred to to suggest the general thought of the legis-

lature. But even this staff is not provided, and, after carefully studying the act, the only concrete impression left on the reader's mind, from which he would be enabled to visualize the collective thought of the legislature, would be that they were endeavoring to crystalize into law the sentiment that neither the Constitution, the laws of the United States, nor the Organic Act were ever intended to apply to labor legislation.

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**3. The Act is an independent Act and as such is incomplete and fails to provide any procedure for vesting the lien or foreclosing it.**

The Act purports to be an independent act, and does not derive virility from any other act now in existence, and every provision in conflict therewith is expressly repealed. For its wording it borrows some, but not all, of the provisions of the general mechanic's lien law in force in Alaska when this Act was enacted. (Comp. Laws of Alaska, sec. 694). By its general provisions it attempts, ineffectually, however (104 Pac., 792, *supra*), to repeal a part of said Act, but does not borrow any of the provisions for vesting the lien or enforcing the same. The generator is there without the power to make it go, or any means for conducting the energy after it is created. If we borrow the power to bring the lien into force, to-wit: the provisions of the old law about the time and manner of creating a lien by filing notice of lien, etc.—[the provisions of which are not applicable to the whole of this Act, two separate methods being provided, one under the general lien law and another under the “dump

lien law," essentially differing from each other],—even then the machine is not complete, and to utilize the energy so created we must borrow again from the general equitable powers of the courts of equity the general principles relative to the foreclosure of liens, all of which must be added to this Act presumed to be complete in itself.

The latter part of Sec. 1 of the Act declares a lien shall attach to all the gold, gold dust, and other precious minerals, etc. Gold or gold dust sold in good faith, in the due course of business, for full value, to a banker or merchant, or used as a medium of exchange, or delivered to a United States postoffice, or to an express company for transportation, is apparently still subject to the lien. There are no means indicated for impressing it with the lien and no time limit within which the lien could be filed. It might readily be argued that, if the purchaser commingled it with other gold dust, not likewise tainted with the lien, the whole mass would be subject to a lien wherever it was found and that for an indefinite time; the manner of acquiring and enforcing the lien being by the legislature cheerfully shifted to the shoulders of the Courts, attorneys, and litigants.

The trial Court recognized the Act as being a separate, independent act, by refusing to allow attorneys' fees or costs of preparing and filing the liens, as provided by the general mechanic's lien law of Alaska. The Act itself has no provisions in regard to filing liens, but the Court held that it was necessary to file a lien in order to burden the land with the lien, and the only possible means of up



holding them in any way was to borrow from the general mechanic's lien law the provisions relative to the filing of liens. Objections to the introduction of the liens in evidence were overruled; defendants' motion to strike the liens as exhibits from the files was denied (Ass. of Error II). All the rulings of the Court indicated his conviction that to uphold the Act in any particular he considered it absolutely necessary to borrow the provisions of the general mechanic's lien law so far as they related to filing of liens. If this was permissible, to have been consistent he should have borrowed the other provisions relative to attorneys' fees and costs and allowed them as part of the judgment. The rulings are inconsistent and one of them *must* be erroneous.

He frankly stated that he didn't know what the law meant, and attorneys for appellant cheerfully acknowledge a similar state of mind.

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**4 and 5. The act impairs the obligations of existing contracts and is in violation of section 10 of article I of the Constitution of the United States and is retrospective and retroactive.**

Prior to the time the act in question went into effect, a mortgage on a mining claim and its output, properly executed and recorded, if made in good faith for a valid consideration, was absolutely good as against all the world, even against a mechanic's lien, if recorded prior to work being commenced by the lien-claimants on the property so encumbered (Comp. Laws of Alaska, sec. 693), save and except in regard to valuable minerals in

dumps of gold-bearing gravel, taken out of a *placer* mine and remaining unwashed when the lien was filed. (Id., secs. 162-174. Act of Congress, 25 June, 1910, 36 Stat. L. 848-851.)

The last named act, however, provides: "*This preference (priority over mortgages, deeds, bills of sale, etc.) shall not apply to any such deed, mortgage, bill of sale, attachment, conveyance, or other claim given in good faith and for value prior to the approval of this act.*"

After 30 July, 1913, all such existing mortgages, deeds, bills of sale, conveyances, etc., whether held by residents or non-residents, were void as against a laborer's claim, regardless of whether the laborer had actual notice thereof or constructive notice by reason of their recordation as provided by law, unless the *mortgagee* posted notice on the claim covered by the mortgage, containing the "date and amount of the mortgage, the volume and page where recorded, and a description of the property mortgaged," etc. (Act, sec. 5).

If a mortgagee did not know that work was being performed on the claim and had no opportunity to protect his mortgage interest, an operator, by defaulting in his payments, could cause liens to be filed, and his contract of mortgage would become null and void. If he learned that work was being done on the ground several months after it had actually commenced and he then hastened to post his notices; yet all labor done before such posting had priority over his mortgage.

The general mechanic's lien law in force in Alaska prior to 30 July, 1913, and probably now in effect, provides that

the owner of a claim has three days after he *learns that work is being performed* on the claim, to protect himself by posting non-liability notices. (Comp. Laws of Alaska, sec. 694), and the interest of a mortgagee is amply protected by having his mortgage recorded before the work commences. (Id. 694).

As a further proof of the inconsistency and incongruity of the Act, we desire to call the Court's attention to the fact that paragraph 4 of said Act gives the lien of the persons named therein as beneficiaries priority over all mortgages on the "mine, mining claim, or other property." The first portion of section 5 of the Act permits the holder of the mortgage to protect his interest by posting notices, etc., but the latter portion of section 5 enables the lien claimant to reach forth and take away the substance, while leaving the mortgagee the shadow, for it provides:

"The provisions in this act as to the priority of liens herein mentioned shall not apply to any leasehold interest *or* to the ore, earth, gravel, sand, gold, gold dust, or other precious minerals, extracted from any mine, lode, mining claim, deposit, shaft, tunnel, incline, adit, drift, or other excavation, by any lessee or lessees or other person or persons not the owner of such property; and such lien shall be prior to and preferred over any deed, mortgage, attachment, or any lien whatsoever, whether the same was given or made prior to the performance of such labor or not.

It is not provided that the *lessees' share or percentage* shall be taken, but *all* the valuable minerals, metals, etc., whether mortgaged or assigned or not, regardless of



the compliance or non-compliance by the owner of the mortgage with the provisions of the act relative to the posting of non-liability notices. For fear they had overlooked something, the legislature, impliedly at least, invests the gravel, sand, rock, and earth with the attributes of "valuable mineral", and gives them to the lien claimant also.

The law is evidently conceived in ignorance of existing law and embodied in the laws of Alaska without any attempt to harmonize it with other provisions of the Code, or in recognition of any principle of equity or fair-dealing. It unblushingly ignores existing contractual rights, and contains no saving clause to protect those who had, in good faith, entered into contracts with others, when their contractual rights are fixed by existing laws. Owners of property pledging or encumbering the same in satisfaction of their obligations are deprived of the means to pay their indebtedness. The rights of mortgagees or assignees who have advanced money on mining property and as security have taken liens upon or assignments from the owners or lessors of their portion of the output, are deprived of their security. The seventh son of a seventh son, gifted with the power of prophecy, never would have anticipated such action on the part of the legislature, and the mine-owners, merchants, and bankers of Alaska, who believed their contracts, solemnly entered into, whereby their rights would be recognized and protected under the provisions of the then existing laws, now find, to their sorrow, that every principle of law that stands in the way of the laborer

must be made subservient to the whims of the legislature.

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**The Act of the Alaska Legislature imposed additional duties on the Lessor and divested it of rights already vested.**

The lease to Spalding and his associates was executed when they first went to work upon the ground about 13 May 1912 (Trans. P. 251). Congress, which then legislated for the Territory of Alaska, had imposed but one condition upon the owner of the ground to preserve his property from liens, and had in effect contracted with such owner that, if he would post upon the ground a notice, in a public place, disclaiming any responsibility (Com. L. of A. sec. 694), his ground should not thereafter become liable for any indebtedness contracted by the lessee. Lessors doubtless had this in mind at the time said lease was executed, and relied thereon, and took the necessary steps to protect themselves from lessee's liabilities.

It has been repeatedly held that an act is in impairment of a contract when it deprives one of the beneficiaries under the contract of a right that he then had, or if it renders the enforcement of his right more burdensome, or takes away from him any benefit, however minute, that might have accrued to him under his contract as it stood at the time of its execution.

“Any deviation from the terms by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed therein, or

dispensing with those which are, however minute or apparently immaterial in their effect upon the parties, impairs its obligation." Sutherland Stat. Con. sec. 663, citing

Green vs. Bibble, 8 Wheat. 85, 5 L. Ed. 547.

Planters Bank vs. Sharp, 6 How. 301-329, 12 L. Ed. 447.

"Nothing is more material to the obligation of a contract than the means of its enforcement. The ideas of validity and remedy are inseparable, and both are parts of the obligation which is guaranteed by the constitution against impairment. If legislation 'tends to postpone or retard the enforcement of the contract the obligation of the latter is to that extent weakened.' " Id., sec. 665.

"Since the prohibition as to the impairment of the obligation of contracts is absolute, the amount and extent of the impairment is immaterial."

6 Ruling Case Law, sec. 319.

Farrington vs. Tennessee, 95 U. S. 679, 24 L. Ed. 558.

"Any act, therefore, which changes the expressed intention of the parties to a contract, *or such as results from their stipulations*, is held to impair its validity, and it is immaterial as to the degree or nature of the change, whether it relates to its validity, construction, duration, discharge, or the evidence of the contract; in all cases the conclusion is the same." (Italics ours.)

6 R. C. L., sec. 319, and cases there cited.

The general principle is aptly stated in 6 R. C. L., sec. 334, as follows:



“The general principle is that the legislature has power to take away by statute that which has been given by statute, except when to do so would obviously amount to the impairment of a vested right.”

The owners of the ground had a vested right to keep their ground free from liens by strictly complying with the law as it existed at the time said contract was made, and in the original lease, the terms of which were in force by oral extension during the time plaintiff and his assignors were working on the ground, lessee has contracted to keep posted three notices good under the then existing law. (Par. 10 of Lease, Trans. p. 242.)

“The repeal of a law which constitutes a contract is an impairment of its obligation.”

6 R. C. L., sec. 318, citing

Carondelet Canal etc. Co. vs. Louisiana, 233 U. S. 362, 34 S. Ct. 627.

In treating the tests of impairment of contract, in 6 R. C. L., sec. 318, it is said:

“The obligation of a contract is impaired by a statute which *alters its terms by imposing new conditions*, or dispensing with conditions, or which *adds new duties*, or releases or lessens any part of the contract obligation, or *substantially defeats its end*. It may also be stated that a constitutional provision is considered as rendering void any statute which is retrospective and which destroys a vested right of action arising ex contractu.” See ruling cases there cited.

*Conforming to an existing law is a contract and that law entered into the contract and became a part thereof at the time same was made.*

“Conformable to the well established rule that the laws which subsist at the time and place of making the contract enter into and form a part of it, as if they were expressly referred to or incorporated in its terms, the obligation of a contract is measured by the standard of the laws in force at the time it was entered into, and its performance is to be regulated by the terms and rules which they prescribe.”

6 R. C. L. sec. 314, citing

2 How. 608, [11 U. S. (L. Ed.) 397.]

139 Fed. 111, [71 C. C. A. 199, 1 L. R. A. (N. S.) 1171.]

11 So. 97, [16 L. R. A. 308, 30 A. S. R. 95.]

17 Atl. 405, [4 L. R. A. 348, 10 A. S. R. 266.]

106 N. W. 566, [4 L. R. A. (N. S.) 1074, 125 A. S. R. 574, 91 Am. Dec. 262.]

2 How. 608. [11 U. S. (L. Ed.) 397.]

1 S. E. 80, [98 Am. Dec. 397, 7 Am. Rep. 23.]

19 Wash. 207, [53 Pac. 53, 4 L. R. A. 815.]

“There can be no other standard by which to ascertain the extent of the obligation than that which the terms of the contract indicate, according to their settled legal meaning; when it becomes consummated, the existing law defines the duty and the right, compels one party to perform the thing contracted for and gives the other a right to enforce the performance by the remedies then in force.

“The law which thus establishes the obligation of a contract is not general or universal law, but the law of the jurisdiction in reference to which the contract is made.” (6 R. C. L. 314, and cases cited.)

Measured by the standard above set forth, which is

supported by a number of excellent authorities, the right to keep its ground free from liens by posting not *three*, but *one*, notice upon the ground *was a part of the contract entered into by the Reliance Mining Company upon the date the lease was made, and any attempt on the part of the legislature of the Territory of Alaska to abridge that right was an impairment of an existing contract, and as such was void.*

We recognize the fact that Congress is not bound by the provisions of subdivision 10 of article I of the Constitution of the United States, which prohibits *States* from passing any act that impairs the validity of contracts, etc., (*Evans-Snider-Buel Co. vs. McFadden*, 105 Fed. 293,) and we believe that the legislature of the Territory of Alaska overlooked that fact in preparing the act in question. It was doubtless modeled, to a certain extent, after other acts passed by Congress for Alaska, but much broader in its scope and more stringent in its provisions, and without any saving clause exempting existing contracts from the operation thereof.

We believe the same difficulty arose in regard to the *title* of the act, as the various acts passed by Congress in regard to mechanic's liens had brief titles, although more comprehensive than the title to the act in question. Congress is not restricted to treating but one *subject* in an act, nor is the subject or subjects treated therein required to be set forth in its *title*, and, as the mechanic's lien laws passed by Congress for Alaska dealt with more than one subject, which were not expressed in their titles, the Alaska legislature doubtless followed in part the



same form, (as the lien laws for Alaska passed by Congress had been upheld,) overlooking the prohibition contained in section 8 of the Organic Act, which provides "No law shall embrace more than one subject, which shall be expressed in its title."

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**The prohibitions of sec. 10 art. I of the Constitution of the United States apply to Territories as well as States.**

That the prohibitions against *States* passing laws in impairment of a contract means also to include Territories, see *National Bank of Commerce vs. Jones*, 18 Okl. 555, 11 A. & E. Annot. Cases, p. 1041, particularly p. 1043, where it says:

"The Constitution of the United States, which is the supreme and paramount law of the land, and controlling upon all bodies either legislative or judicial, and within the *Territories*, in article 1, section 10, provides: 'No State shall pass any law impairing the obligation of contracts,' and by the provisions of the Organic Act this provision of the Constitution, as well as all other not locally inapplicable, is to be in force in this Territory. (See Organic Act, sec. 28). An act of the legislature which seeks to impair the obligations of a contract, or to impair or destroy vested property rights, is unconstitutional and void."

This decision was rendered by the Oklahoma Supreme Court the same year Oklahoma was admitted to statehood, but the right of action accrued prior to its admission to statehood and the opinion dealt with an act of the *territorial* legislature of Oklahoma.

Section 3 of the *Alaska Organic Act* passed by Congress and approved 24 August 1912 provides in part as follows:

"The Constitution of the United States and all the laws thereof which are not locally inapplicable shall have the same force and effect within the said Territory as elsewhere in the United States."

We deem the foregoing proposition self-evident, but cite authority thereon for the reason that the Courts have held, on questions of diverse citizenship that the word "States" as used in the Constitution does not mean "Territories."

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## 6. The act is in violation of the 5th amendment to the Constitution of the United States.

The act provides for liens on roads, tramways, trails, pipe-lines, flumes, ditches, structures, or superstructures, etc., which may not be, and as a matter of common knowledge seldom are, constructed wholly upon the mine for the working of which they are intended, and which always may be, and frequently are, on the property of others than the owners of the mine or mining claim where the work is being carried on. Yet the lien is extended to each of said interests in realty, and the owners of the ground over which they pass have no means of preventing their interests in said property from being taken under such liens, unless they are likewise the owners of the road, pipe-line, etc.; for section 3 of said act says that the provisions of the act shall not apply to the owners of the mine, the road, etc., when the same

shall be *worked* by the lessees, etc., provided the owner of "*any such mine, lode, shaft, tunnel, incline, adit, drift, or other excavation, mill-site, or mill*, shall have recorded in the office of the recorder wherein such mining property is situate, a copy of such lease or any other instrument before the work shall have begun on such property; provided, further, that the owner or owners of any such *mine or mines, lodes, deposits, shaft, tunnel, incline, adit, drift, or other excavation, mill or mill-site*, before the work shall have begun on *such* property, shall have posted," etc.

The owner of the property, over which a ditch, flume, pipe-line, trail, road, or tramway is constructed, or upon which the structure or superstructure is erected, *if not the owner of the mine*, has no escape from losing his ground should a lien be filed thereon, for *he* is not granted any privilege of escaping liability by posting notices, as that is confined to the owner of the *mine, drift*, etc.

The persons constructing the ditch, pipe-line, etc., may be trespassers on his ground, and he have no knowledge of the work being done; the ditch may be constructed by the staker of a water-right, who, under the law, would be entitled to dig the ditch and install the pipe-line if he did not interfere with the rights of the owner of the ground; the right may be acquired by condemnation, or in a number of other ways, none of which arises out of a lease. It might be that an existing road, flume, ditch, or trail was being improved, with or without the knowledge or consent of the owner upon whose ground the same was located; it might be work being done by



one of the joint owners of a ditch or pipe-line on the ground of one of the owners of the ditch, many miles from the claim being worked; in which event, the person doing the work on the ditch or other work would not be a trespasser; yet the lien takes it, without the owner of the soil being able to protect himself in any way. He has not any lease to record and his non-liability notices would be non-effective. He may have granted oral permission to dig a ditch or construct a pipe-line, but even if the permission was in writing, if he is not the *owner of the mine* he can not post his notices and have them effective. He has no remedy at law, no "day in court," and his property is taken without "due process of law."

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**The Act is so ambiguous and uncertain as to be unintelligible.**

The wording of the Act is vague and uncertain, to use the most charitable of terms. It is weird and fantastic in its conception of extracting "ore, gold-bearing rock, gravel, sand, gold dust, or other precious minerals" from "such . . . road, tramway, trail, flume, ditch, pipe-line, building, structure, superstructure, dredge, steam-shovel or machinery." We, of course, would not want to say that it could *not* be done, but we do say that we have never *known* it to be done.

We presume that the expression in paragraph 3 of the Act relative to the recording of the lease in the "office of the *recorder* wherein any such *mining property* is situated" may be attributed to "legislative license" to

use words to express what they do not mean. We had always been under the impression that mining claims were out in the hills, and until after the first Alaska legislature passed the act in question, would never have attempted to stake a claim in a recorder's office.

Such looseness of expression renders it extremely difficult to interpret the Act, and we are required to "guess" at its meaning rather than to acquire the information from the perusal of the Act. Again, in the same section (sec. 3), the legislature declares that "the failure of any owner or owners of *such* property (the mine, excavation, etc.) to post the notices above provided for shall be deemed conclusive proof of the consent of such owner or owners that his or their interest in *such mine* shall be subject to any lien filed under the provisions of this act," etc.

Section 2 of the Act provides that "when two or more mines, lodes, mining claims, or deposits *are owned or claimed by the same persons* and worked through a common shaft, tunnel, incline, adit, drift, or other excavation, or over one tramway, or at one mill or reduction works, then all the mines, lodes, mining claims, or deposits so worked, and all roads, tramways, trails flumes, ditches, or pipelines, buildings, structures, superstructures, and all machinery used or worked in connection therewith, shall, for the purposes of this Act, be deemed one mine."

Must there be conjunctive ownership of the mines *and* workings through a common shaft, etc., before the lien becomes effective? Is it brought into effect if there is

separate ownership of two or more mines worked through a common shaft, or through several shafts if worked over a common tramway? Does the law apply to separate operators of the same ground or on separate claims, provided they use the same tramway or same mill or reduction works? In such a case as last mentioned, if one operator defaulted in his labor claims would his neighbor's claim be taken under lien for the debts of the defaulting operator, because they used the same tramway or mill or reduction works? Would the owner of a custom mill, doing work for several owners or lessees, lose his mill under the lien if *one* of his customers defaulted? We do not know, and we can not tell from the Act.

Referring again to the latter part of sec. 3 above quoted. What *owner* does it refer to and what *mine* is subject to lien?

The legislature attempted, in section 2 of the Act, to broaden the scope of the meaning of the word "mine" to include trails, roads, pipe-lines, flumes, tramways, ditches, buildings, structures superstructures, and machinery, (dredges, steam-shovels, etc., not specifically named but obviously intended to be included), and thus subjects itself to the charge that they attempted to practice what is so expressly condemned by the Supreme Court of Idaho in *State vs. Coffin*, 74 Pac., 693, *Supra*.

The Act does not provide for the filing of a lien; therefore, how could any property be subject to "any lien filed under the provisions of this law?"

Section 4 says that none of the property subject to



the lien shall be bound thereby for a longer period than six months *after the lien shall have been filed, unless suit be brought, etc.* Within what time must the lien be filed? What shall it contain? How shall personalty subject thereto be invested with the lien? How shall the gold dust be burdened with the lien? What of innocent purchasers before the lien is filed? What of an attaching creditor after work ceases, while the right of lien is in a state of suspension? What title, if any, is required by the owner of the ground who cleans up the gold dust in the boxes or on the plates in the mill before the inchoate right of the lien-holder has become vested by affirmative act on his part? What law, if any, now on the statute books, would apply to the vesting of a lien on the vast number of subjects and articles enumerated in the new law and not covered by either of the old laws on our statute books, when the present act does not furnish the procedure and there are no precedents in the general equity practice to govern such radical provisions?

We have a general mechanic's lien law extending to the ground, the structures thereon, and the leasehold interest, except where notices are posted, such as were posted in the present case, exempting the land from its operation. And we have the "dump" lien law, where the lien and the rights of the parties are clearly defined. But we have nothing to guide us in the present instance but speculation, and no object upon which to work but the chaotic jumble of inconsistent phrases and clauses, inconsistent in themselves and subversive of the hereto-

fore well-established principles of law and opposed to all principles of equity.

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## II.

Should the act of the Alaska legislature (chap. 79 Session Laws 1913) be held valid, plaintiff's action would fail, as non-liability notices, sufficient in substance and proper in form, had been duly posted by lessors of the ground involved in this action, before the lien claimants commenced work.

This question is presented by Assignments of Error Nos. 19, 20 and 27.

Under the provisions of sec. 694 of the Compiled Laws of Alaska, in force at the time of the passage of chap. 79 of the Session Laws, Alaska Legislature, for 1913, above referred to, effective 30 July, 1913, the owner of mining property upon which work was being done could avoid all liability and defeat any lien thereon by posting a notice in a conspicuous place on the ground, disclaiming responsibility for any indebtedness contracted by lessees or other persons working thereon, and said notice did not require any statement relative to the name of the lessees, etc., nor was the owner required to record the lease.

On 25 January, 1913, while lessee Spalding was working on the ground, the Reliance Mining Company caused *three* such notices to be posted (Findings of Fact, iii., Tr., pp. 282-3). These notices remained posted in conspicuous places during all the time that the plaintiff and his assignors were working on the ground, and were seen and

read by all the witnesses who testified at the trial.

Plaintiff Martin commenced work on 28 July, 1913; his assignor Peterson on 22 July, 1913; his assignor Myers 29 July, 1913; his assignor Mrs. Deck 14 July, 1913; and his assignor Ahlmark 12 July, 1913. Under the lease, as it stood when they went to work, they were charged with notice that the owners of the claim upon which they worked would not be responsible for their wages, neither was the land subject to a lien therefor, and they must look to their employers for compensation. They were not even employed by the Reliance Mining Company, but they affirmatively allege that they were employed by Spalding and Brumbaugh, who were prosecuting the work as "lessees" upon the claim in question. (See paragraph 3 of each separate cause of action.) The trial Court recognized the fact that the property of the Reliance Mining Company would not be held liable for any work performed before 30 July, 1913, as it disallowed the wages of Martin, Peterson, Myers, Mrs. Deck and Ahlmark earned *prior* to 30 July, 1913. If the workmen had actual or constructive notice prior to 30 July, 1913, that the claim was not responsible for their wages, the questions naturally present themselves: By what peculiar system of reasoning could they be said to have lost that knowledge over-night? Was their knowledge of facts in any way different on 30 July, 1913, from what it was on 29 July, 1913? Does the Alaska legislature, with its limited powers, possess the power, unknown or heretofore unsuspected, to, at will, afflict the citizens of Alaska with amnesia?



Plaintiff's assignor Curry was on the claim in April of 1913, and he saw the notices and knew that the Reliance Mining Company disclaimed responsibility on its own part and on behalf of its property for debts contracted by the lessees. (Tr., pp. 264-265.)

During all the time that plaintiff and his assignors were employed on the ground the notices remained posted in conspicuous places; one on the gallows-frame at the collar of the shaft, where the men could and must see it every time they went down the shaft or came up from their work; one on the mess-house, where they had their meals served; and one on the bunk-house, where they slept. There was no attempt on the part of the plaintiff and his assignors to prove by any of the witnesses that they did not know of the existence of the notices or had not seen them, but on the contrary all the witnesses testifying at the trial admitted having seen the notices and having read them, and when they finally quit work we find the plaintiff (Tr., p. 247), apparently as a representative of all, and also his assignor Curry (Tr., p. 264), each bringing one of the notices to town, presumably to see if there was any chance to base an action upon any defect in the notice. Their actions indicate full knowledge of the existence of the notices, rather than any lack of such knowledge.

In a recent case decided by the District Court of Appeals for the Third District of California, *Street vs. Hazzard et al.*, 149 Pac., 770, advance sheets, 26 July, 1914, the Court says, in syllabus 1:

"The presumption created by the Code of Civil Pro-

cedure, sec. 1183, providing that every person in charge of any mine shall be held to be the agent of the owner, is rebuttable, and one working in a mine with knowledge that the owner will not be liable for his compensation is not entitled to a lien on the property, on any theory of agency."

That case presents many features analogous to those of the case at bar, for the legislature of California changed the law regarding non-liability notices before the claimants in said action went to work. Prior to such change in the law, the owner of the property had posted notices of non-liability, sufficient under the then existing law in California, and these notices were seen by the claimants and they had knowledge that the owner of the property would not be responsible, nor would said property itself be liable for any debts contracted by the persons in possession thereof, who were not the owners thereof. The amendment required a verified copy of the notice of non-liability to be recorded in a specified office, etc. After this law went into effect, the owner of the property failed to record a verified copy of the notice. Hence the suit. It is apparent that both lien-claimants were employed long after the amendment went into effect in California. In discussing the matter, the Court, on p. 772, in considering the effect of the failure to comply with the law requiring the recording of a verified copy of the notice of non-liability, says:

"The filing could have been of no possible advantage to the respondents, since its purpose was entirely accomplished by the actual knowledge that they had of

the facts ,as set forth in said stipulation. The recording of the notice is undoubtedly to convey to the persons performing the work knowledge of the non-liability of the owner. *In the present instance, therefore, it would have added nothing to what was known and recognized without it."* (Italics ours.)

In the case at bar, the plaintiff and his assignors knew that Spalding was lessee of the ground; knew that notices had been posted, whereby the Reliance Mining Company disclaimed any responsibility for any indebtedness contracted by said Spalding. Had the lease been recorded and the notices given the lessees' names, *what further information could they have received relative to the non-liability of the owner of the Soo Claim?* They knew Spalding was only a lessee of the ground, and they so allege in the liens and complaint. The lessee was receiving 100 per cent of the output, and this fact must have been known to the claimants, for, on 9 October, they formed a partnership with the lessee, whereby it was agreed that they, the laborers, and other workmen, should receive *all* the gold taken out while they were so employed. (Tr., pp. 282-283.) We believe that the circumstances of the case at bar bring it squarely within the reasoning of the Court in the case of Street vs. Hazzard, above cited. During the time they were working, Spalding had no written lease, but was working under a verbal extension of a prior expired lease, and the law provides no means of recording a verbal lease.

The Reliance Mining Company, having once posted their notices of non-liability, their right to protection



was vested, and they were not required to post new notices every time the personnel of the lessee company changed. (Marshall vs. Cardenell, (Ore.), 80 Pac., 652.)

The Court, in the case last cited, speaking through Mr. Justice Wolverton, on page 653, said:

“The statutory manner of giving notice is by posting a written announcement; presuming, no doubt, that when once posted it will remain a sufficient length of time to impart knowledge to the persons it is intended to affect. The language is not ‘to keep posted,’ but ‘to give notice by posting’ . . . . but if posted in good faith with the intention and purpose that it should remain as long as a notice would remain in a place of that nature under ordinary conditions, it would seem that the intendment of the statute had been observed and the notice given.”

Section 694 of the Compiled Laws of Alaska, hereinbefore set forth in full, only provides that within three days after the owner has obtained notice of the work being done he shall “*give notice that he will not be responsible for the same, by posting a notice to that effect in some conspicuous place upon the land.*” etc. There is no provision for keeping the notice posted or for posting more than one notice.

In the case at bar, the *three* notices posted were durable, being printed on cloth and not susceptible of being quickly faded or obliterated by the action of the elements, and they remained *permanently* posted. The most noticeable feature of said notices was a statement in larger type than the balance of the instrument: “WILL NOT BE LIABLE,” and the body of the instrument dis-

closes who would not assume liability, to-wit, the "Reliance Mining Company," and for what they would not be liable, to-wit, "labor and supplies." If the rights of the lessors were fixed on 25 January, 1913, when the notices were posted, by what authority could the Alaska legislature legislate their contractual rights out of existence?

The final analysis of the Court's reasons for giving judgment against appellants is found in Finding 4 (Tr., p. 283), where the sole ground of the decision is based upon the alleged failure of the Reliance Mining Company to post three notices containing "*the name or names of the lessee or lessees or other persons operating said property.*" The same finding recites that the lease under which Spalding was operating the mine was not recorded. Therefore, the lease of 3 June, 1913, which *was* recorded, is *not* the lease under which he was operating, and the Court must have been satisfied that he was operating under a verbal extension of an expired lease that could not have been recorded, as the evidence shows that Spalding only had two leases; the recorded lease not going into effect until Jan. 1, 1914, long after all labor described in the complaint was performed.

Section 3 of the Act in question does not make failure to *record* a lease evidence of the consent of the owner that his ground shall be charged with the debts of the lessee, but *failure to post notices, containing, among other matters, the name of the lessee, etc.* The plaintiff and his assignors knew the name of the lessee, for they allege it in their liens and complaint; hence, what further information did they desire?

The Court does not find that the Reliance Mining Company failed to *post* notices disclaiming liability, but expressly finds that such notices were posted, but bases his decision *solely* upon the ground that the *lessees'* names were not contained therein. If, when a notice is once posted properly, the law has been complied with, as held by Mr. Justice Wolverton in 80 Pac., 602, heretofore cited, and if the lease was recorded, and the lessee's name was put in the notice, the lessee should sell his interest in the lease without lessor's knowledge, would lessor be required to post new notices immediately, telling about it? Must he perform a possible impossibility and be forced to record the assignment concerning which he may have no notice and in which he has no interest?

In the event of an assignment of lease, notices good when posted would not contain the name of the lessee thereafter operating, and presumably, under the ruling of the lower Court in the case at bar, the lien would be good and the laborer or miner who was theretofore precluded from filing a lien could then claim ignorance of his employer and hold the property under the lien.

Is the laborer, miner, etc., charged with *any* knowledge in regard to whom he is working for or by whom he is employed? Is he supposed to make *any* inquiries about the status of his employer? Or is he such a favorite of the Courts and the legislature that he is not required to exercise any of the intelligence with which he has been endowed by Nature? Is he to be classed with the idiots, incompetents, indigents, Indians, and other wards of the Government and the Territory and



have all his thinking done for him? Or is he required to exercise some little discrimination in the choice or acceptance of employment? Is he permitted to accept employment when he has no reasonable expectation of getting his pay, and, when the expected happens, look to someone else for his wages, because a notice of non-liability did not contain information he already possessed?

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### III.

**Where lienable and nonlienable items are inseparably commingled in a notice of lien it is void.**

*The trial Court was in error in overruling defendants' motion to require the complaint to be made more definite and certain by a segregation of items, showing the amounts claimed for the different characters of work enumerated in the complaint. Assignments of Error iii. (See sec. 908, Comp. Laws of Alaska, hereafter set forth.)*

If chapter 13, Session Laws of Alaska, 1913, is void, this question is unimportant.

If the said Act was valid and the lien-notices posted by the defendant below were sufficient to avoid liability under the liens, the question here presented is important only as establishing a rule of practice.

But in the event the Act was held void, the notices must have been sufficient. Even then, as a matter of pleading, before the defense of liability avoided by posting of non-liability notices was interposed, under the general lien law of Alaska that would then be in force

in Alaska, defendant was entitled to favorable action on the motion, as the notices contain a lumping charge for labor in (a) prospecting (b) mining, the latter work and other labor described therein *not* being lienable.

Pioneer Mining Co. vs. Delamotte, 185 Fed. 752.

Andrews vs. Ladd, 188 Fed. 313.

Noble vs. Gustafson, 204 Fed. 69.

These are all Alaska cases, all construing sec. 691, Comp. Laws of Alaska.

In support of the proposition that when lien-notices contain a lumping charge, including lienable and non-lienable items, no lien attaches unless they are capable of segregation, see:

Gett vs. Ames (Ore.), 48 Pac. 355.

Gordon Hdwe. Co. vs. San Francisco et al. (Cal.),  
22 Pac. 406.

Harrisburg vs. Washburn (Ore.), 44 Pac. 390.

Dallas Lumber Co. vs. Waco Woolen Mfg. Co., 3  
Ore. 527.

Williams vs. Toledo Coal Co., 36 Pac. 159.

Allen vs. Elwert, 44 Pac. 823-826.

Hughes vs. Lansing, 55 Pac. 95-97.

Morris vs. Marsh, 3 Alaska 140.

2 Jones on Liens, secs. 1322, 1409, 1419.

In the case of Ahlmark, 25th cause of action. (Trans., pp. 93-97), all of his work was teaming, for which there is no lien under the old law. (Comp. Laws of Alaska, sec. 691, *supra*.)

The same is true of Mrs. Deck, 20th cause of action (Tr., 75-79), as she was cooking and nothing else.

## ASSIGNMENTS OF ERROR NOS. I AND II.

No. I.—Since the action was instituted under the provisions of chap. 79 of Alaska Session Laws of 1913 and there is no provision therein for filing a lien, and as it is an independent act and does not provide for the recovery of cost of preparing or filing liens, and has no provision for attorney's fees, paragraphs vi, viii and ix of each cause of action should have been stricken as irrelevant and redundant.

Sec. 908, Comp. Laws of Alaska, provides:

“If irrelevant or redundant matter be inserted in the pleading, it may be stricken out on motion of the adverse party; and when the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the Court may require the pleading to be made more definite and certain by amendment.”

No. II.—The argument relative to the first Assignment of Error above, and the argument under par. 3, sec. 1 of this Brief, are applicable to this assignment.

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## OTHER ASSIGNMENTS OF ERROR.

There is no conclusion of law found by the Court upon which to base a judgment for foreclosure of the liens on the personal property described therein. (Exceptions, xxviii, xxix.) It will be noted that in the *conclusions of law* the Court utterly fails at any place to find that any lien extends to the personal property, although the *decree* orders certain personal property sold which includes personal property that is not even included in



the Act itself, for instance, tools, cables, etc.

The Court does not find as a conclusion of law that any lien attached to the Soo Mining Claim for any labor performed by the plaintiff or his assignors. (Assignment of Errors xxvi, xxvii, xxxii.) Our conception of the purpose of findings of fact and conclusions of law is that the findings of fact shall contain the decision of the Court upon the facts presented, and that from the facts as found by the Court the conclusions of law shall be drawn, and that the judgment is based upon the conclusions of law so found.

If our contention is correct, there was no foundation whatsoever for the judgment rendered in this case, as there are no conclusions of law upon which to base a decree for the sale of the mining claim except the general statement contained in the first conclusion of law, wherein it is said that all the claims of the various persons contained in the findings of fact, down to paragraph xxv, constitute a lien on the Soo Quartz Mining Claim in said findings described. Among the findings from i to xxv are findings dealing with various other subjects than claims of lien-claimants, and also dealing with the claims of W. L. Spalding, one of the defendants, in and to the fixtures, tools, etc. (Finding v.)

Finding xii is to the effect that John Curry performed 38 days' labor in the period between 30 September and 8 October, 1913, and we presume the Court will take judicial notice of impossibilities.

Referring a paragraph xxv of the Findings (and it can not be told from the first conclusion of law whether it

is inclusive or exclusive of said paragraph xxv), we find certain labor therein described, which by the fourth conclusion of law is held not to be covered by a lien.

We find by the 9th finding that \$75.00 for each separate cause of action would be a reasonable attorneys' fee for the institution and prosecution of each of said causes of action, etc., and while in the first paragraph of the conclusions of law it is stated that said claim is a lien upon the ground, yet by the third conclusion of law the Court finds that no such lien exists.

By the seventh finding of fact we learn that each claimant paid \$11.75 for preparing and filing for record his lien-notice, which was a part of the amount claimed by the plaintiff in the action, and which by the first conclusion of law is declared to be a lien upon the Soo Quartz Mining Claim; yet by the fourth conclusion of law the Court says that no lien exists for the preparing or filing of the lien-notices. At no place in the conclusions of law is any statement of any description made that any lien exists upon any of the personal property described in the judgment or in the complaint.

*Defendants' motion to strike part of the proposed findings of fact and objections thereto should have been granted. (Assignments of Error, viii, ix, xi, xv, xvi.)*

The portions of the proposed findings of fact that defendants asked to have stricken, as well as the amendments proposed by the defendants, were for the purpose of eliminating from said findings matters which can not be considered as anything but conclusions of law. We think that the mere perusal of the findings objected to

will convince the Court of the correctness of appellants' position without the necessity for citing any authorities.

One of the findings of fact established by the Court (Finding i) is to the effect that W. L. Spalding was in possession of, prospecting, developing, mining, etc., a portion of the Soo Quartz Mining Claim, and Finding vi is to the effect that said Spalding employed each of the lien-claimants. Defendants' motion to amend plaintiff's seventh finding, as shown by assignments of error xiii and xiv, should be granted, to show that the lien-notices as filed did not contain true statements of the person or persons by whom the lien claimants were employed.

If plaintiff was entitled to any judgment, it would only be upon the portion of the Soo Mining Claim actually being worked by Spalding under his lease from the Reliance Mining Company (Assignments of Error V, VI, X, XVII). This is on the theory that the act of the legislature was void, and if plaintiff was entitled to any lien whatever, it would be under the provisions of sections 691-692 of the Compiled Laws of Alaska. Under those sections it is only provided that the lien shall cover the building or other improvement, "together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof . . . . and the mine on which the labor was performed or for which the material was furnished shall also be subject to the liens created by this Code," etc.

The mine in question was upon the westerly 300 feet of the Soo Mining Claim, which was the only portion of the claim that was being worked by the lessee, and as



that was apparently a sufficient area for him to carry on mining operations upon, there should have been no judgment of the Court for the sale of any other portion thereof. Had there been a lease on the balance of said claim, would the Court have said that the portion of the claim covered by the lease to some other person should be liable for the indebtedness, or is the indebtedness only chargeable against that portion of a mining claim upon which a mine is opened?

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#### ASSIGNMENTS OF ERROR XXIII AND XXIV.

The Court finds as a fact that the defendant Spalding was not operating under the lease of 9 June, 1913, and therefore it should not have been admitted in evidence, and defendants' objections were well taken.

All the other assignments of error, with the exception of VII, have heretofore been considered directly, or, if not so treated, the argument is applicable thereto, and the conclusions drawn therefrom, appellants respectfully submit, support the text of the assignments.

As to assignment VII, we must perforce abandon it, as the question involved is more one of eyesight than fact, and, in our view of the case, as hereinbefore set forth, it is immaterial.

We regret the length of this Brief, but believe that the Court will justify our acts when it has read the Act in question.

On the other hand, the Court's decision on the points involved will doubtless have the effect of settling considerable litigation now pending; and one complete present-

ment of the matter in all its phases may avoid a number of appeals. The Alaska legislature in 1915 repealed the Act, but that did not wipe out the causes of action that arose before its repeal or settle pending litigation.

We submit that the trial Court was in error and that the cause should be reversed and the action dismissed.

Respectfully submitted.

M'GOWAN & CLARK,

THOS. A. M'GOWAN,

JOHN A. CLARK,

JOHN KNOX BROWN,

Attorneys for Appellants.

Dated Fairbanks, Alaska,

February.....11<sup>th</sup>, 1916.





NO. **2741**

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IN THE  
**United States Circuit Court of Appeals**  
For the Ninth Circuit

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W. L. SPALDING and THE RELIANCE  
MINING COMPANY, a Corporation,

*Appellants,*

vs.

S. A. MARTIN,

*Appellee.*

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Appeal From United States District Court, Territory of  
Alaska, Fourth Division.

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**BRIEF OF APPELLEE**

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MORTON E. STEVENS  
Attorney for Appellee

Filed

April 20 1900

F. D. McDonald

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NO. \_\_\_\_\_

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IN THE  
**United States Circuit Court of Appeals**  
For the Ninth Circuit

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W. L. SPALDING and THE RELIANCE  
MINING COMPANY, a Corporation,

*Appellants,*

vs.

S. A. MARTIN,

*Appellee.*

---

**BRIEF OF APPELLEE.**

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**Statement.**

The statement of the case in appellant's brief is substantially correct with the exceptions as hereinafter set forth.

1. There are no "other creditors" seeking liens except laborers upon and about the mining property in controversy.

2. Referring to the last paragraph on Page 5 and continuing on page 6 of appellant's brief, appellee contends that the notices of nonliability described, were not prepared in accordance with law then in force and that the same were not signed, as stated in said brief, and contend that the ground referred to in said notices des-



cribed the same as "said PLACER mining claim" and could not relate to the quartz mining claim in controversy herein. (Tr. pp. 248, 249, 250, and 260 to 268, both inclusive.)

3. Referring to the first paragraph beginning on page 6 of said brief, appellee contends that the extension of the written lease, by resolution of the board of directors of the lessor corporation, was not a *verbal* extension, but was an extension in writing and attached to the original written lease and might thereafter have been duly recorded. (Tr. 236, 237.) Appellee further contends that the particular lease under which defendant Spalding was operating said mine, always was in doubt so far as the laborers could ascertain, and was probably in doubt at the time of the court's decision. (Tr. pp. 236 to 246, both inclusive.)

4. Referring to the bottom of page 7 and top of page 8 of said brief, appellee contends that the allowance made by the court below for the use of a team belonging to Wm. Ahlmark was allowed in connection with his labor in hauling wood and supplies for said mine. (Tr. pp. 187 to 191, both inclusive.)

Appellee contends that under the lien law set forth in Chapter 79, Session Laws of 1913, it was immaterial whether the labor, for which liens were sought, consisted of prospecting or development work or actual mining, as heretofore distinguished by this court under a former statute, and contends further that by the terms of the lease and the verbal extension thereof, under which ap-

pellants claim such labor was performed, such distinction was eliminated, as both the lessor and lessee thereof recite therein that the object of such lease is "for the purpose of prospecting and developing the same", (referring to said property leased). (Tr. p. 252.) That said lease further provides that, for and in consideration of the services rendered by the lessees in *opening and developing* said property, said lessees shall retain all of the gold and other precious metals and minerals extracted from the portion of said claim therein leased, and not to pay to lessor any part or portion thereof. (Tr. p. 253.)

### **Citation From Compiled Laws of Alaska.**

Appellants, in setting forth Sec. 694, Comp. Laws of Alaska, omitted in line 4, page 27, of their brief, the following: "shall be held to have been constructed at the instance of such owner or person having or claiming any interest therein."

Sec. 697. No lien provided for in this code shall bind any building, structure, or other improvement for a longer period than six months after the same shall have been filed, unless suit be brought before the proper court within that time to enforce the same, or, if a credit be given, then six months after the expiration of such credit; but no lien shall be continued in force for a longer time than one year from the time the work is completed by any agreement to give credit.

Sec. 699. Actions to enforce the liens created by this code shall be brought before the district court, and the pleadings, process, practice, and other proceedings shall be the same as in other cases. \* \* \*

In all actions under this chapter the district court, upon entering judgment for the plaintiff, allow as a part of the costs all moneys paid for the filing and recording of the lien, and also a reasonable amount as attorney's fees. \* \* \* \*

In all actions to enforce any lien created by this chapter all persons personally liable and all lien holders whose claims have ben filed for record under the provisions of section six hundred and ninety-five shall, and all other persons interested in the matter in controversy or in the property sought to be charged with the lien may, be made parties; but such as are not made parties shall not be bound by such proceedings. The proceedings upon the foreclosure of the liens created by this code shall be, as nearly as possible, made to conform to the proceedings of a foreclosure of a mortgage lien upon real property.

### **Argument.**

The most important question raised by appellant's assignments of error goes to the validity of the act of the Alaska Legislature on the subject of liens. Chap. 79, Ses. L. 1913.

We concede that in the construction of a statue, courts are led to put such interpretation upon the act of a legislature as will avoid conflict with the constitutional or restricted power of the legislature; but contend that the courts will give full force and effect to the meaning and intent of the legislature, when it can be done without an extravagant, restrained and fantastic construction; and also that the lawmaking body is always presumed to have



acted within the scope of its powers. The generality of a title is no objection and it is within the province of the legislature to determine for itself, how broad and comprehensive shall be the object of a statute and how much particularity shall be implied in the title of the act.

Cooley Const. Lim. p. 174.

Marsten et al vs. Humes, Judge, et al, 28 Pac. (Wash.) 520.

Statutes relating to the same subject matter must be construed in *pari materia*. This may include the earlier statutes and such as have expired or been repealed as well.

Sec. 34 and 48, Endlich on the Interpretation of Statutes;

Northern Commercial Co. vs. United States, 217 Fed. 33. (9th circuit.)

We, therefore, submit that it is disclosed, by the briefs herein, that for a number of years prior to the act in question, a lien law for laborers on mines, etc., existed, and by the interpretation of such statute by this court in

Cascaden vs. Wimbish, 161 Fed. 241; followed by

Pioneer Mining Co. vs. Delamotte, 185 Fed. 752;

Andrews vs. Ladd, 188 Fed. 313;

Noble vs. Gustafson, 204 Fed. 69,

a laborer was denied a lien for labor performed in actual mining, as distinguished from prospecting and development work. That this interpretation led to the passage of the act of the legislature in question. That the legislature undertook to change this law and enlarge the pro-

tection to laborers, by eliminating this distinction between mining and development, and in so doing passed the act entitled: "An act to create, establish and provide for liens on mines in favor of laborers and material men, and repealing all acts and parts of acts in conflict therewith."

Plaintiff below, at the trial of said cause, contended that this act did not repeal or take the place of the former legislation upon the subject, excepting where the same conflicts with parts thereof. And this is the reason why the Alaska Legislature omitted the time within which a lien should be filed, because thirty days are provided in the old act, and this is the reason why the allowance for drawing the lien, filing the same, and for attorney's fees to plaintiff in the foreclosure of such liens, were omitted, as well as the proceeding to enforce and foreclose such liens. The trial court did not in all respects adopt this view, and while it held the act valid, yet treated the same as an independent act, and it necessarily followed that plaintiff's allowance for costs of drawing the lien, filing the same, and for attorney's fees, were disallowed, and no appeal therefrom was taken. After this decision, and probably by reason thereof, the Legislature, in 1915, passed another lien law entitled: "An Act to provide for the liens of laborers and miners working on, in and about mines and mining property, repealing the act of the legislature of the Territory of Alaska, entitled 'An Act to create, establish and provide for liens in favor of laborers and material men, and repealing all acts in conflict therewith', approved April 30, 1913, and declaring an emer-

gency."

Chap. 13 p. 29, Ses. L. 1915.

Appellants' brief, p. 77.

By this act a lien is given for mining as well as for development work, and is also given upon the machinery, stamp mills, etc., following generally the act of 1913, and providing for attorney's fees, costs, etc.

It follows, therefore, that the questions raised are of no general or public importance, as contended by appellants and they affect only the parties hereto. We cannot, therefore, consistently join appellants in asking this court "for future guidance in interpreting and administering the existing laws and acts that the Legislature of Alaska may hereafter enact." (pp. 29, 30, 76 and 77, Appellants' brief.)

Appellants, in their contention that said legislative act is void, set forth many objections thereto and extend some of the objections to an imaginary absurdity, as to what may or may not be lienable under this general title. The only question involved in this case is as to whether the title of the act is sufficient to include a lien on the machinery and stamp mill and appliances, used upon the mine in connection therewith. We submit that such machinery and stamp mill were properly treated as a part of the real estate and belonging to the mine, and the appliances and tools connected therewith, are, under all of the authorities, to be treated as a part thereof, and that said machinery and stamp mill, used in connection with said mine, could legally be included in the general title pro-



viding for a laborers' lien upon mines, and that mines and machinery used in connection therewith and being a part thereof, does not include more than one general subject.

Marston vs. Humes, Judge, et al, *supra*.

People vs. Briggs, 50 N. Y. 553;

People vs. Hills, 35 N. Y. 449;

Tingue vs. Village of Port Chester, 101 N. Y. 294;

People vs. Banks, 67 N. Y. 568;

State vs. Bowers, 14 Ind. 195;

Wheeler vs. State, 23 Ga. 9;

State vs. Garrett, 29 La. Ann. 637;

Railroad Co.'s Appeal, 77 Pa. St. 429;

State vs. Gut, 13 Minn. 341;

Tuttle vs. Strout, 7 Minn. 465.

The objections to this act, by appellants, that the act is not complete in itself, but that the same is ambiguous and uncertain, are untenable under the general principles of statutory construction.

Northern Commercial Co. vs. United States, *supra*;

United States vs. Union Pacific Railroad Co., 91 U. S. 72, 79, 23 L. Ed. 224;

Platt vs. Union Pacific Railroad Co., 99 U. S. 48, 64, 25 L. Ed. 424;

Smith vs. Townsend, 148 U. S. 490, 494, 13 Sup. Ct. 634, 37 L. Ed. 533;

We submit that the enactment of a laborers' lien law, or the amendment thereof, such as in the case at bar, has never been held to be retroactive or in violation of any provision of the Constitution or any amendment there-

of, but that such laws have been universally sustained, when properly enacted, to the extent of securing a lien against property upon which labor is expended after the passage of such act, and that a provision that such lien will attach to the mine, even under lease, unless the owner thereof performs certain acts by way of giving notice, does not impair any existing rights or take away his property without due process of law. It only imposes the additional duty that the owner must pay such labor to the extent of his property, unless he protects himself therefrom by, as in this case, filing of record his lease and posting notices disclaiming liability, as required in said act in three conspicuous places upon the property, setting forth, among other things, the name of the lessees and the book and page wherein such lease is recorded. This can be no violation of the inherent or constitutional rights of a lessor. It is a reasonable protection for the laborer, who belongs to a particular class universally recognized as requiring such protection. The importance of such protection could not be better illustrated than in the case at bar. Here defendant Spalding, according to the testimony, and during the times involved, operated said mine and during such times defendant Brumbaugh was president and prior thereto had been vice-president (Tr. 234 and 256) of the defendant Reliance Mining Co., the owner of said claim. Said defendant Brumbaugh, president of defendant company, as aforesaid, was acting as superintendent and bookkeeper at said mine (Tr. v. 234 and 256.) That during said times herein involved, said min-

ing operations were conducted under an extension of the lease, by resolution of the board of directors of defendant company, which lease was not recorded as required by said act, and the laborers could not have known its contents without an inquiry not expected of them or required by law; that if such inquiry had been made, the fact may have been disclosed that the lease under which said mine was being operated, conclusively declares that the consideration for *opening and developing* said mine is the right of the lessees to retain all the gold taken therefrom during the life of said lease (or any extension thereof). Tr. p. 253.)

Therefore, we submit, that the parties to this suit were by said lease conclusively bound by their recitals therein, and that the court must consider said mine as unopened and undeveloped, and that the labor expended thereon, for which liens are claimed, was development work. That the presence of defendant Brumbaugh, president of defendant company, as aforesaid, acting in the capacity of superintendent and bookkeeper in such development of such mine, was certainly enough to mislead common laborers or any ordinary business man.

Further evidence of defendant Brumbaugh's dual capacity in the premises is disclosed by his verification as president of said Reliance Mining Co. of defendant company's separate answer herein. (Tr. pp. 228, 229, 234, 235). The application of said legislative act is particularly pertinent under these facts in declaring that "The failure of any owner or owners of such property to post



the notices above provided for, shall be deemed *conclusive proof* of the consent of such owner or owners, that his or their interest in such mine shall be subject to any lien filed under the provisions of this act."

The trial court adopted this view and found further, as a matter of fact, that some time after January 25, 1913, which was before any labor was performed for which a lien was allowed (to-wit, July 30, 1913), that the signature to the notices posted, had been destroyed, as well as the word *quartz*, which had been originally written above the printed word placer mining claim, leaving the notices unsigned and applicable only to "said *placer* mining claim". (Tr. pp. 282, 283.) While there is no express provision of the statute requiring these notices to be, at all times, maintained as originally posted, yet we contend that under the circumstances herein, these notices, during the time of the labor in question, were misleading to the laborers, (if they were anything), and that the defendant company was bound by such misleading notices, or was bound by their insufficiency by the continual daily presence of its then president and former vice-president, the said Brumbaugh, (Tr. pp. 234 and 256.) and superintendent of said mining development. If such notices were posted in three conspicuous places upon the property, as claimed by appellants, then said defendant company is chargeable for the full knowledge of such weatherbeaten changes, and chargeable with full knowledge of their contents or insufficiency as well as any laborers upon said property. (Tr. 234 and 235).

We submit, therefore, that such notices were insuffi-

cient to relieve the owner of said mine from liability, even under the lien law existing prior to said act of the territorial legislature; and, if that be true, the liens claimed herein, are valid under the old law.

It is not contended by appellants that any of said notices complied with the requirements of the legislative act. They fail to state "the name or names of the lessee or lessees, or other person or persons other than the owner operating said property", etc.; and it is conceded that neither the lease under which said mining property was being developed, or the extension thereof, was placed of record as required by Sec. 3 of said legislative act.

We submit that the legislative act in question deals with only one *subject*, to-wit, the subject of liens of laborers and material men upon mines and such other properties as are reasonably connected therewith or belonging thereto, as disclosed by the context of the act, and that, even if the act itself does deal with property not properly included in the title, the act would only be void as to such property not belonging or connected with the mines. Any other construction would mean the failure of the principal object and legislative intent of the Alaska legislature. If the objections made by appellants, as disclosed on pages 30 and 31 of their brief, are well taken, it would mean almost an endless amount of legislation by the passage of a separate lien law act for each particular class, kind, or description of property upon which a laborer could have a lien; and by the passage of a separate lien law act for each particular class, kind, or description of property

upon which a material man could have a lien; and that according to appellants' contention herein, each of said innumerable and separate acts should contain statutory provisions for the enforcement and foreclosure of each of said liens.

We submit that the logical and proper interpretation of this act under the law is, that it relates to one *subject* (general subject), which is reasonably expressed in its title.

The fact that the legislative act in question does not provide for the filing of the lien, or the time within which the same should be filed, is no bar in this case, for the reason that said lien was filed within thirty days, as provided by the old lien law, and there has never been any contention that thirty days is an unreasonable time within which to file the same. The act contemplates the filing of a lien, because it refers to such lien.

The objection that the act does not provide the manner of enforcing or foreclosing the lien, is not well taken, first, because the old act provides therefor; secondly, the trial court had original, general and equity jurisdiction with full and inherent power to enforce and foreclose such liens; thirdly, the statute of Alaska provides an adequate method for the foreclosure of liens, Chap. 42 Sec. 1221, etc., Comp. Laws of Alaska. If the court disagrees with appellee's contention and holds that the act is insufficient to cover the stamp mill and machinery, or that the same is personal property, and not belonging to the mine: the act, nevertheless, should be upheld, we submit, to the extent of maintaining our liens against the mine and that



the judgment could be modified accordingly.

We suggest further that the question as to whether a lien under said legislative act should be held to be prior to a mortgage lien of prior date, for the want of posting notices does not come within the scope of this controversy; and that there is no question herein involving the priority of liens. It is further suggested that it is immaterial for the purpose of determining this case, whether under the act a valid lien can be created or enforced against the gold extracted from the mine, "if such gold, in good faith, in due course of business, is sold, for full value to a banker or merchant or used as a medium of exchange, or delivered to the post office or express office for transportation", as appellants *frivolously* suggest. pp 36, and 37 of their brief. Appellee apologizes for taking notice of such absurdities.

The objection of appellants that the said act of the legislature imposes additional duties on the lessor and thereby divests it of rights already vested, is not well taken. If the argument and law cited on pages 50 to 58, both inclusive, of appellants' brief, are applicable to the case at bar, then we submit that, to enact any labor lien law by any legislature, would be to impair the obligation of contract and take property without due process of law, and would be void as to all persons having acquired property, by deed or otherwise, prior to the passage of such act.

Answering pp. 67, 68 and 69 of appellants' brief, we admit that the three notices posted were "durable, be-

ing printed on cloth, and not susceptible of being quickly faded or obliterated by the action of the elements, and that they remained permanently posted." But we again call attention to the evidence and finding of the court that the word *placer mine* was originally marked but with pen and ink and the word *quartz* written with pen and ink above the word *placer*, and that the name of the owner of the property was also written on said cloth notices in ink, and that all of said writing was soon obliterated by the weather; thus leaving permanently printed upon said cloth notices the information, that the undersigned, (nobody, because the signature had been eliminated), would not be responsible for any debts incurred by laymen now operating upon said *placer claim*.

We believe the court, by reason of former litigation, and from general information, will not only take judicial notice, but has actual notice that the Tanana Valley, from a mining standpoint, is almost entirely placer, and particularly Dome Creek and the vicinity of the mine in question. We deem it unnecessary to quote Cook et al vs. Klonos, et al, and other important cases heretofore considered by this court. The assertion made by appellants on page 68 of said brief, that "the plaintiff and his assignors, knew the name of the lessee, for they alleged it in their liens and complaint, hence what further information did they desire?" is not in accordance with the facts. In all of the numerous liens filed herein, as well as in the complaint, plaintiff, and his assignors of said liens, alleged that the defendants Spalding and Brumbaugh were operating said mine as lessees).

It is, therefore, probable that the laborers relied for their wages upon holding the property, by reason of the non-compliance with the legislative act upon the part of defendant company, or, upon their belief that the mine was being worked by defendant company, by its president, defendant Brumbaugh, who was superintendent of said mine, or that they relied upon holding defendant Brumbaugh, as one of the lessees, who is presumed to be solvent.

We desire to further call the court's attention to the fact that the plaintiff below and his assignors, alleged in their several claims of lien, that said mine was being operated by defendants Spalding and Brumbaugh under a ten years' lease, dated June 9, 1913, and recorded in Vol. 5 of Leases, page 498 of the records of Fairbanks Precinct, and claimed liens upon two stamp mills, one of which was located upon the mine, near the working shaft, and the other stamp mill was situate about one-fourth mile from said mine. (Tr. "Exhibit A" to "Exhibit N1", pp. 103 to 194, both inclusive.) It is, therefore, clear, that the laborers were again misled particularly by the conduct of defendants, by relying upon said lease as affecting their rights, because at the trial defendants proved that said recorded lease was made subject to all prior existing leases, and that said operations were not conducted under the same, (which covered the entire mine). (Tr. pp. 238 to 245, both inclusive). But that a small portion of said mine was being developed under an extension of a certain lease dated May 13, 1912, which was not recorded, and which provided for no royalty, and the objects of which, and the consideration therefor, was for the sole



purpose of opening and developing said property. (Tr. pp. 251 to 256, both inclusive.) Under said proof, the laborers were certainly misled by reason of the failure to record the true lease under which said work was being conducted, as required by said legislative act. The effect of such secret so well kept by defendants below, was to enable them to argue to the court that claimants could not have any lien upon said mine, except that portion covered by their *secret* lease, to-wit, 300 feet long by 100 feet deep. In other words, that if they were entitled to a lien, it is only a lien upon the hole or vacancy caused by defendants' working. The court below did not agree with such contention of defendants below and allowed the liens upon the entire mine, according to the provisions of said legislature.

We call the court's attention to the further fact that the court allowed a lien only upon the stamp mill and machinery upon said mine and as belonging thereto, and refused a lien upon the stamp mill not situated upon the mine; this upon the theory that the stamp mill and machinery was a part of the real estate and belonged to the mine. (Tr. pp. 300 to 303, both inclusive).

The only expression of the Supreme Court, which has come within our notice, concerning the validity of the legislative acts of the Alaska legislature, is in the case of the United States vs. John W. Wigger, Vol. 35, No. 3 Sup. St. Rep. p. 42 (Jan. 1, 1915), which case upholds the act considered therein.

Appellants complain of the impossibility contained in the court's Finding No. XII, that John Curry performed

thirty-eight days labor between September 30th and October 8th, 1913. This, of course, is a typographical error and should have read, September 1st instead of September 30th, which is disclosed in Curry's lien (Tr. p. 111). Had Counsel called the court's attention to said typographical error the court would, undoubtedly, have corrected the same. It is a harmless error and too late to raise such objection for the first time in the appellate court.

Taylor vs. Williams, 2 Colo. App. Rep. 559, 31 Pac. 504, 506.

There are a number of objections made in appellants' brief which counsel deems unnecessary to answer, for the reason that it is self-evident that such objections are not well taken.

We respectfully submit that the decree, from which this appeal has been taken, should be sustained and the case affirmed.

MORTON E. STEVENS

Attorney for Appellee

**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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UNITED STATES FIDELITY & GUARANTY COM-  
PANY, a Corporation,

Appellant,

vs.

GEORGE B. BURKE and E. W. FERRIS, as Admin-  
istrator of the Estate of DAVID L. KELLY, De-  
ceased, and MOUNTAIN TIMBER COMPANY,  
a Corporation,

Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court  
for the Western District of Washington,  
Southern Division.

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Filed

FEB 15 1916

F. D. Monckton,

Clerk.





No. 2744

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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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UNITED STATES FIDELITY & GUARANTY COM-  
PANY, a Corporation,

Appellant,

vs.

GEORGE B. BURKE and E. W. FERRIS, as Admin-  
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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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**Names and Addresses of Attorneys.**

J. D. BEACH, Esquire, 709 Board of Trade  
Bldg., Portland, Oregon,

N. D. SIMON, Esquire, 709 Board of Trade  
Bldg., Portland, Oregon, and

R. C. NELSON, Esquire, 709 Board of Trade  
Building, Portland, Oregon,

Solicitors for the Appellant, U. S. F. & G. Co.

A. E. CLARK, Esq., #1224 Yeon Bldg., Port-  
land, Oregon,

A. H. IMUS, Esquire, Kalama, Washington,

COY BURNETT, Esquire, Lewis Building, Port-  
land, Oregon,

EDMUND C. STRODE, Esquire, c/o Coy Bur-  
nett, Lewis Building, Portland, Oregon,

M. J. GORDON, Esquire, National Realty Bldg.,  
Tacoma, Wash.,

J. H. EASTERDAY, Esquire, National Realty  
Bldg., Tacoma, Washington, and

I. E. SHRAUGER, Esq., Mount Vernon, Wash-  
ington,

Solicitors for the Appellees. [1\*]

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\*Page-number appearing at foot of page of original certified Record.



*In the United States District Court for the Western  
District of Washington, Southern Division.*

UNITED STATES FIDELITY & GUARANTY  
COMPANY, a Corporation,

Appellant,

v.

GEORGE V. BURKE, and E. W. FERRIS, as Ad-  
ministrator of the Estate of DAVID L.  
KELLY, Deceased, and MOUNTAIN TIM-  
BER COMPANY,

Appellees.

**Stipulation for Statement on Appeal of the U. S.  
Fidelity & Guaranty Company, a Corporation.**

It is hereby stipulated and agreed by and be-  
tween the appellant, U. S. Fidelity & Guaranty Com-  
pany, and the respondents, by their respective at-  
torneys, that the following statement of the case  
shows as fully as is necessary to an understanding  
of the question on this particular appeal, the facts  
alleged and proved or sought to be proved, and how  
the question at issue arose and was decided by the  
United States District Court for the Western Dis-  
trict of Washington, Southern Division, and said  
parties agree that such statement may be filed in  
the office of the clerk of said district court and may,  
together with the final decree herein, be certified  
to the U. S. Circuit Court of Appeals for the Ninth  
Circuit as the record on this appeal, in accordance  
with Rule 77 of the Rules of Practice for the Courts  
of Equity in the United States. [2]

**Statement of the Case.**

The original complaint herein was filed by Geo. V. Burke versus Mountain Timber Company, a Corporation, in the United States District Court for the Western District of Washington, Southern Division. After setting forth the diverse citizenship of the parties the complaint alleges that the defendant at Portland, Oregon, on Feb. 3, 1910, made, executed and delivered to one David L. Kelly, its certain promissory notes for the principal sum of thirty-two thousand, five hundred (\$32,500.00) dollars, with interest at 5% per annum, and simultaneously therewith to secure payment thereof made, executed and delivered to the said David L. Kelly, a mortgage on certain real estate in the county of Cowlitz, State of Washington, which said mortgage was duly recorded; that David L. Kelly is now deceased, and Frank G. Kelly was duly appointed administrator of his estate, and that said administrator had assigned said notes and mortgage to the plaintiff; that the principal and interest of said notes remain unpaid and that \$5,000.00 is a reasonable sum to be allowed as attorney's fees, in accordance with the provisions of the notes and mortgage.

The following paragraphs of said complaint are significant in connection with this particular appeal:

**[Portions of Complaint.]****“XIII.**

Plaintiff alleges that the chief and principal value of the mortgaged premises described in said mort-

gage and in this complaint described, consists in the merchantable timber standing thereon. That said mortgage herein referred to and hereto attached, contains a stipulation as follows, namely: [3]

‘Provided, and said mortgagor company hereby covenants and agrees to and with said D. L. Kelly, and his assigns, that any timber cut by said Mountain Timber Company, or its assigns, on any of the above-described lands before full satisfaction and payment of this mortgage shall be paid for to said D. L. Kelly, or his assigns, at or before the time of cutting the same, at the rate of \$2.50 per thousand feet, according to the log scale or cruise made by a cruiser or scaler selected and agreed upon by the parties hereto, and the payments so made shall apply upon the amount due upon this mortgage.’

#### XIV.

Plaintiff alleges that defendant has heretofore cut a large amount of timber from said mortgaged premises without complying with the terms and condition of said stipulation of said mortgage set forth in the preceding paragraph hereof, and without making any payment or payments or account thereof, and is at the present time engaged in cutting a large amount of timber thereon and threatens to and will, unless restrained by an order of this Honorable Court, continue to cut and remove from said premises large quantities of timber now standing thereon, thereby endangering, lessening and depreciating the mortgage security afforded by the conditions and provisions of said mortgage, and unless re-



strained and enjoined by order of this Court, defendant will cut and remove so much of said timber as to greatly impair, if not wholly destroy the mortgage security aforesaid, and plaintiff will thereby become deprived of the benefit and value of the security so granted and afforded by the terms and conditions of said mortgage.”

The prayer of said complaint in addition to judgment, foreclosure, sale, etc., asks the following additional relief:

“That a temporary injunction issue, restraining and enjoining the defendant, its agents, attorneys, servants, and all persons acting by, under, or through it, from cutting or removing any timber now standing, growing or being upon said mortgage premises, and that upon the final hearing of this cause said temporary injunction be made permanent.” [4]

An answer was filed by the Mountain Timber Company denying, among other things, the allegations of paragraphs XIII and XIV of the complaint. There is also the further and separate answer which does not, however, affect the question involved in this particular appeal.

On April 25, 1913, the plaintiff filed the following  
MOTION.

**[Notice of Motion for Temporary Injunction.]**

To Mountain Timber Company, a Corporation, Defendant Above Named:

Please TAKE NOTICE that on Monday, the 5th day of May, 1913, at 10:00 o'clock in the forenoon of said day, or as soon thereafter as counsel can be

heard, the plaintiff in this action will move the Court for a temporary injunction to be issued herein, enjoining and restraining the defendant, its officers, agents, servants, and all persons acting by, under, or through it, from cutting and removing any timber now standing, growing, or being upon the premises described in the complaint herein, against which a mortgage foreclosure is sought in accordance with the prayer of said complaint.

The application for temporary injunction will be made on the verified complaint in this action and the affidavit of Frank G. Kelly, the originals of which have heretofore been filed, and copies thereof herewith served upon you.

Sgd.—M. J. GORDON and  
J. H. EASTERDAY,  
Solicitors for Plaintiff.” [5]

Accompanying said motion was the following  
**Affidavit [of F. G. Kelly on Motion for Temporary  
Injunction].**

“State of Oregon,  
County of Multnomah,—ss.

I, F. G. Kelly, being first duly sworn, depose and say that I am the duly appointed, qualified and acting administrator of the Estate of D. L. Kelly, deceased, in the State of Oregon, having been appointed by due and regular order of the County Court of the State of Oregon for Multnomah County, said D. L. Kelly being the payee in those certain notes described in the complaint in the above-entitled action.

That said defendant, Mountain Timber Company, is extensively engaged in the sawmill, lumber and logging business in Cowlitz County, Washington, operating and running a large sawmill in said county.

That said defendant has been and now is actually cutting and removing off of the land described in plaintiff's complaint the standing and growing timber thereon of merchantable character, and *are* failing, refusing and neglecting to account for the timber in accordance with the terms of said mortgage therein described in said complaint.

That practically half or more of the timber which stood thereon at the time of the execution of said mortgage has been cut and removed from said land by said defendant, its agents and employees, and said defendant threatens and states to your deponent that it will continue to cut and remove said timber until the same and the whole thereof has been cut and removed and will denude said land of all of its timber.

That said timber when cut and removed therefrom by said defendant is immediately sawed up in the sawmill of said defendant and sold and disposed of, and as to that already cut and removed, said plaintiff has no means of ascertaining the amount thereof.

That if said defendant is permitted further to cut and remove said timber standing and growing on said land, plaintiff's security will be inadequate to satisfy the amount of said notes secured by said mortgage, and said mortgage security will be rendered valueless.



That the chief value of said mortgage security lies in the timber standing and growing on said land, the said land if denuded of its timber has practically no value.

That said land has already been so depleted of its timber by said defendant that it is now very doubtful whether or not the remaining portion thereof is sufficient to satisfy said mortgage, and every day said defendant is allowed to cut and remove said timber is an immediate and irreparable loss and damage to said plaintiff.

That said defendant is heavily involved in debt, and [6] divers and numerous suits and actions are pending against *them* in which said suits and actions, if said defendant is unsuccessful, large judgments will be secured against said defendant and will be prior liens to any deficiency judgment which might be obtained by said plaintiff in this action.

That said defendant by and through its officers and agents have promised to pay off and liquidate said notes and mortgage, and have used said promises as a cloak to continue to cut and remove said timber and denude said land of its timber, and if permitted to continue further to cut and remove said timber, plaintiff's mortgage security will be rendered valueless and great, immediate and irreparable loss and damage will result to said plaintiff and plaintiff's assignor.

Sgd.—F. G. KELLY.

Subscribed and sworn to before me this 19th day of April, 1913.

(Notarial Seal)

Sgd.—J. F. SHELTON,  
Notary Public for Oregon.”

On May 5, 1913, there was filed the following

**Stipulation [Withdrawing Application for Injunction, etc.]**

“WHEREAS, the plaintiff in the above-entitled action has heretofore filed his bill of complaint seeking foreclosure of mortgage in said bill mentioned, and has also made application for a preliminary injunction restraining defendant from cutting timber on the alleged mortgaged premises during the pendency of this action; and

WHEREAS, the defendant has on this 5th day of May, 1913, filed in this court and cause a bond in the sum of \$45,000.00 with the United States Fidelity & Guaranty Company as surety thereon, conditioned for the payment in full of any judgment which shall be rendered in favor of the plaintiff in this action;

NOW THEREFORE, in consideration of the filing of said bond, it is hereby STIPULATED AND AGREED,

First: That plaintiff's application for an injunction be and the same is hereby withdrawn; and

Second: It is further STIPULATED that defendant may have to and including June 5, 1913, in which to enter further appearance in said action.

10      *United States Fidelity and Guaranty Co.*

Dated this 5th day of May, 1913.

Sgd.—GORDON & EASTERDAY,  
Solicitors for Plaintiff.

Sgd.—E. C. STRODE,  
A. H. IMUS,  
ABEL & BURNETT,  
Solicitors for Defendant.” [7]..

Accompanying said stipulation was the following

**Bond [for Payment of Judgment].**

*“In the District Court of the United States for the  
Western District of Washington, Southern Di-  
vision.*

GEORGE B. BURKE,

Plaintiff,

v.

MOUNTAIN TIMBER COMPANY, a Corporation,  
Defendant.

WHEREAS, in the above-entitled court and cause plaintiff above named, on the 25th day of April, 1913, filed his complaint asking judgment against the defendant for the sum of thirty-two thousand, five hundred (\$32,500.00) dollars, together with interest thereon at 5% from the 3d day of February, 1910, with attorney's fees, and in said complaint prayed for a temporary and permanent injunction enjoining the defendant from further cutting the timber upon lands described in said complaint;

NOW, THEREFORE, we, Mountain Timber Company, a corporation, as principal, and United States Fidelity & Guraanty Company of Baltimore, Mary-



land, as surety, are held and firmly bound unto George B. Burke in the penal sum of forty-five thousand dollars (\$45,000.00) for the payment of which, well and truly to be made, we hereby bind ourselves, our successors or assigns, provided, and the condition of this obligation is such that if Mountain Timber Company shall pay, or cause to be paid, in full any judgment which shall be rendered in favor of the plaintiff in the above-entitled action, then this undertaking to be null and void, otherwise to be and remain in full force and effect.

Dated this 3d day of May, 1913.

Sgd.—MOUNTAIN TIMBER COMPANY,  
By COY BURNETT, Principal.

Sgd.—U. S. FIDELITY & GUARANTY  
COMPANY,

By JOHN C. STANTON,  
*By Attorney in Fact,*  
Surety.

[S. Corporate Seal.] [8]

The plaintiff consenting to the form and sufficiency thereof this bond is hereby allowed and approved.

Dated May 5, 1913.

Sgd.—EDWARD E. CUSHMAN,  
Judge.”

A COMPLAINT IN INTERVENTION was filed by E. W. Ferris, as Administrator of the Estate of David L. Kelly, reciting the appointment of E. W. Ferris as such administrator, his qualifications and other formal allegations. Among them the refusal of the plaintiff to surrender to the intervenor said notes and mortgage.

Thereafter, on the 21st of September, 1913, an order was entered directing that said Ferris be made a party plaintiff in his said capacity of administrator and that said suit be continued in the names of said Burke & Ferris as parties plaintiff, and extending to the plaintiffs leave to file a supplemental complaint against the defendant, Mountain Timber Company. The SUPPLEMENTAL COMPLAINT was thereupon filed on behalf of Geo. V. Burke and E. W. Ferris, as Administrator, etc., as plaintiffs, versus Mountain Timber Company, a corporation, defendant. The Supplemental Complaint, in so far as material to this appeal, contains the following allegations:

**[Portions of Supplemental Complaint.]**

**“IV.**

Thereafter, and upon application for a temporary injunction as prayed for by the plaintiff Burke, in his said complaint, the defendant executed to the said Burke, with the U. S. Fidelity & Guaranty Company, as surety, a bond in the sum of \$45,000.00 conditioned in substance, that the Mountain Timber Company would pay or cause to be paid, any judgment which might be rendered in said cause; in consideration of the execution and filing of the said bond, a temporary writ of injunction was not issued, and the defendant was not restrained from continuing to cut and remove the timber from said lands, said timber constituting a substantial part, or the sole value of the security for the mortgage aforesaid.

## XVII.

And these plaintiffs reaffirm and reallege by a reference, the allegations contained in paragraph thirteen of the complaint filed by the plaintiff Burke, herein, and in this connection allege, that since the bringing of this suit, and the execution of the bond hereinbefore referred to, and which has been filed with the clerk of this court, and is a part of the files and records herein (reference being made to said bond for a more particular statement of its terms), the defendant has cut and removed from the premises described in said mortgage, substantially all of the standing and growing timber thereon, which constituted a substantial part of the value of the security of said mortgage, and that by reason thereof the value of the security upon the land described in said mortgage, denuded of its standing and growing timber as aforesaid is, as plaintiffs are informed and believe, and therefore allege the fact to be, very much less than the amount due upon the mortgage; and that the bond executed and filed in this cause as aforesaid, is the substantial security upon which the plaintiffs must rely in this case for the enforcement of any judgment that may be obtained herein."

In the prayer of said supplemental complaint, in addition to the relief asked for in the original complaint it was also prayed

"That plaintiffs have judgment against the defendant and against the surety upon the bond mentioned in the complaint herein, and in this supplemental complaint, for the principal sum of \$32,500.00,



together with interest thereon from the 3d day of February, 1910, at the rate of 5% per annum, and for such further sum as the Court shall adjudge reasonable for attorney's fees, for the bringing and prosecution of this suit, and for their costs and disbursements herein."

The Mountain Timber Company answered, denying among other matters, the allegations of paragraphs IV and XVII of the supplemental complaint.

A further and separate answer was also filed by the said company but same is not material on this appeal. [10]

A reply was filed by the plaintiffs to the further and separate answer of the Mountain Timber Company, but same is not essential here.

On June 15, 1915, the Hon. Edward E. Cushman, Judge of said court rendered an opinion in favor of the plaintiffs and against the defendant, Mountain Timber Company. In the course of said opinion the Court said with regard to matters material on this subject:

**[Portion of Opinion.]**

"This is a suit to foreclose a purchase money mortgage brought by the administrator of the mortgagee, David L. Kelly, . . . . The present suit was brought after these tenders were made. The mortgage provided that any timber cut by defendant upon the mortgaged lands before full satisfaction of the mortgage should be paid for at the rate of \$2.50 per thousand feet, at, or before the time of cutting the same. There was no attempt to comply with

this provision before, or after the making of these tenders, although a large amount of timber was cut and removed from the land. At the commencement of the suit, the complainant, Burke, asked an injunction against the further cutting of timber in such manner. To avoid the issuance of such injunction, the defendant, with the United States Fidelity & Guaranty Co., as surety, executed a bond to the complainant, Burke, in the amount of \$45,000 conditioned to pay any judgment executed herein. . . .’}

On July 6, 1915, the following notice with endorsements set forth, was filed in said Court:

**[Notice of Motion for Filing and Entering of Findings of Fact and Conclusions of Law, etc.]**

*“In the District Court of the United States for the Western District of Washington, Southern Division.*

GEORGE B. BURKE and E. W. FERRIS, as Administrator of the Estate of DAVID L. KELLY, Deceased,

Plaintiff,

v.

MOUNTAIN TIMBER COMPANY, a Corporation,  
Defendant. [11]

To the Above-named Defendant, Mountain Timber Company, and Coy Burnett, its Attorney, and United States Fidelity & Guaranty Company:

Please take notice, that on Tuesday, July 6, 1915, at ten o’clock in the forenoon of that day, or as soon thereafter as counsel can be heard, and at the court-

room of said court, in the Federal Building, in Tacoma, Washington, the plaintiffs will move for the signing and entering of Findings of Fact and Conclusions of Law, by said Court, in accordance with the opinion of the Court heretofore rendered and filed, and in accordance with the Findings and Decree, copies of which have heretofore been served upon the defendant in this case.

And at the same time and place, the plaintiffs will move for the entry of Findings and Decree, which, among other things, will provided, that judgment and decree shall go against the defendant, and United States Fidelity & Guaranty Company, surety upon the bond to stay the issuance of an injunction; execution to issue against said companies, and either thereof, and their property jointly, in the event of a deficiency.

Dated this 2d day of July, 1915.

Sgd.—M. J. GORDON and  
A. E. CLARK and  
M. H. CLARK,

Attorneys for Plaintiffs.

The following acknowledgment of service was on the cover of the above notice:

State of Oregon,

County of Multnomah,—ss.

Due service of the within notice, is hereby accepted in Multnomah County, Oregon, this 2d day of July, 1915, by receiving a copy thereof, duly certified to



as such by M. H. Clark, of Attorneys for Plaintiffs.

Sgd.—COY BURNETT,

W. K. K.,

Of Attorneys for Defendant, Mountain Timber Company.

The following affidavit was also on the cover of said notice:

State of Oregon,

County of Multnomah,—ss.

I, J. F. Alexander, being first duly sworn, upon oath, depose and say that I am over the age of 21 years, a citizen, resident and inhabitant of the city of Portland, Multnomah County, Oregon; that I am employed in the office of A. E. Clark and M. H. Clark, attorneys at law, in said city; that I served the within notice on the United States Fidelity & Guaranty [12] Company, by handing to, and leaving with, Charles E. Newman, a clerk in the office of Douglas R. Tate, statutory agent of said United States Fidelity & Guaranty Company, a duly certified copy of said notice certified to by M. H. Clark, one of the attorneys for the plaintiff; that said service was made this 2d day of July, 1915, at the office of said company and statutory agent in the Chamber of Commerce Building, Portland, Oregon.

Sgd.—J. F. ALEXANDER,

Subscribed and sworn to before me this 2d day of July, A. D. 1915.

(Notarial Seal)

Sgd.—M. H. CLARK,

Notary Public for Oregon, Residing at Portland, therein.

My commission expires Feb. 21, 1916.

**[Portions of Findings of Fact.]**

On July 6, 1915, findings of fact and conclusions of law were entered in said court, which, in so far as material to this appeal, recite:

**FINDINGS OF FACT—Paragraph XIII.**

“That the lands described in said mortgage, at the time of the execution of said mortgage, were covered by standing, merchantable timber; that said timber constituted the principal value of said land, and the principal part of the value of the security created by said mortgage; that, among other things and by the terms of said mortgage; the defendant did covenant,

‘and said Mortgagor Company hereby covenants and agrees to and with the said D. L. Kelly, and his assigns, that any timber cut by said Mountain Timber Company, or its assigns, on any of the above-described lands before full satisfaction and payment of this mortgage shall be paid for to said D. L. Kelly, or his assigns, at or before the time of cutting the same, at the rate of \$2.50 per thousand feet, according to the log cruise or cruise made by a cruiser or scaler selected and agreed upon by the parties hereto, and the payments so made [13] shall apply upon the amount due upon this mortgage.’

That since the execution of said mortgage, the defendant Mountain Timber Company has cut and removed from said land, practically all of the standing and merchantable timber thereon, constituting the

chief value of the security; that the defendant has ignored, and failed to keep and perform the last quoted covenant contained in said mortgage, and has not paid any sum or sums whatsoever upon the mortgage debt, according to said covenant or otherwise."

Paragraph XIV.

"That in the complaint by which this action was commenced, the plaintiff, among other things, did pray that a temporary injunction issue, restraining and enjoining the defendant, its agents, attorneys, servants, and all other persons acting by, under or through it, from cutting or removing any timber standing, growing, and being upon said mortgaged premises; that upon final hearing of this cause, said temporary injunction be made permanent. Immediately following the commencement of this action, and based upon the files and records of said cause, and supported by affidavit, the plaintiff did move for a writ of temporary injunction in accordance with said prayer. A hearing was had thereon, and in connection with said hearing, and in consideration that the plaintiff would withdraw his application for a writ of temporary injunction, the defendant, as principal, and the United States Fidelity & Guaranty Company, of Baltimore, Maryland, as surety, did duly execute and file with the clerk of this court, a bond in words and figures as follows, to wit:"

(The bond having been heretofore set out is not now recopied.)

Paragraph XV.

"That at the time of the commencement of this



action, and at the time of the application for a temporary injunction as aforesaid, and likewise at the time of the execution of said bond, the defendant was engaged in cutting and removing the standing, merchantable timber from said mortgaged premises, and there was still a large amount of standing, growing and merchantable timber thereon; that in consideration of the execution of said bond, the plaintiff did not seek to obtain a temporary writ of injunction and defendant was permitted to cut and remove the timber from said premises; and that since the execution of said bond the defendant has cut and removed a large quantity of the timber from said mortgaged premises, and has thus diminished and impaired the security of said mortgage debt in a substantial amount.” [14]

And as

### **Conclusions of Law**

therefrom the Court found that the plaintiffs were entitled to:

(a) Judgment against the defendant, Mountain Timber Company, and the United States Fidelity & Guaranty Company, of Baltimore, Maryland, for the sum of \$32,500.00, with interest thereon at the rate of 5% per annum from the 3d day of February, 1910, and the further sum of \$2,500.00 attorney's fees, and the costs and disbursements of this action.

(b) Judgment for the foreclosure of the mortgage mentioned and described in the complaint and in the supplemental complaint in this cause, and directing a sale of said real property, conformably to

the requirements of the statutes, and the rules of this court, and for the other relief prayed for in said complaint, and in said supplemental complaint.

Thereafter and upon the same day after allowing to the Mountain Timber Company exceptions to each of said findings, the Court entered a decree against the Mountain Timber Company and against the appellant herein, the United States Fidelity & Guaranty Company, as set forth in detail in the annexed certified copy of said decree.

And afterwards, to wit, on the —— day of January, 1916, there was duly filed in said court and cause by the U. S. Fidelity & Guaranty Company, appellant, a petition for appeal in words and figures as follows, to wit:

### **Petition for Appeal.**

The U. S. Fidelity & Guaranty Company, a Maryland corporation, feeling aggrieved by the decree rendered and entered in the above-entitled court and cause on the 6th day of July, 1915, [15] in so far as said decree in terms applies to the said U. S. Fidelity & Guaranty Company, does hereby appeal from said portion of said decree to the U. S. Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and it prays that its appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals, for the Ninth Circuit, under the rules of

said court in such cause made and provided.

U. S. FIDELITY & GUARANTY CO.,

By ROSCOE C. NELSON,

Attorney.

BEACH, SIMON & NELSON,

Solicitors for U. S. Fidelity & Guaranty Co.

**Order Allowing Appeal.**

And now, to wit, on January 3, 1916, it is ORDERED that the appeal be allowed as prayed for.

Sgd.—WM. B. GILBERT,

Judge of the U. S. Circuit Court of Appeals for the Ninth Circuit.

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And afterwards, to wit, on the 3d day of January, 1916, there was duly filed in said court and cause assignment of errors in words and figures as follows, to wit: [16]

**Assignment of Errors.**

Now comes the U. S. Fidelity & Guaranty Company, a Maryland Corporation, and files the following assignment of errors upon which it will rely in the prosecution of its appeal from the decree rendered in the above-entitled court and cause on the 6th day of July, 1915;

First: That the U. S. District Court for the Western District of Washington, Southern Division, erred in entering as a part of said decree a judgment order that the plaintiff should have and recover of the Mountain Timber Company and the U. S. Fidelity & Guaranty Company, thirty-two thousand five hundred (\$32,500.00) dollars, with interest at



5% from February 3, 1910, and \$2,500 attorney's fees and \$312.00 costs, in all, forty-four thousand one hundred and twenty-eight (\$44,128.00) dollars, with interest at 5% from that date, and that the plaintiffs have execution against the Mountain Timber Company and the U. S. Fidelity & Guaranty Company for any deficit remaining after the sale of the real estate ordered by the said decree to be sold.

The error alleged refers only to so much of said decree as effects the U. S. Fidelity & Guaranty Company, and the claim of error is based on the contention that the U. S. Fidelity & Guaranty Company was not a party to the suit, and that the said Court had no jurisdiction in said cause to render the [17] said judgment and decree, or any judgment or decree whatsoever against the said U. S. Fidelity & Guaranty Co.

WHEREFORE, said U. S. Fidelity & Guaranty Company prays that said decree be reversed in so far as same grants the relief named or any relief, in favor of the plaintiffs against the said United States Fidelity & Guaranty Company,

U. S. FIDELITY & GUARANTY COMPANY,

By ROSCOE C. NELSON,  
Attorney.

BEACH, SIMON & NELSON,

Solicitors for U. S. Fidelity & Guaranty Co.,  
Appellant. [18]

And on the same day appellant filed in the clerk's office of said court the following

**Undertaking on Appeal.**

KNOW ALL MEN BY THESE PRESENTS, That, we, the U. S. Fidelity & Guaranty Company, a Maryland corporation, and NATIONAL SURETY COMPANY, are held and firmly bound unto Geo. B. Burke and E. N. Ferris, as administrator of the estate of David L. Kelly, dec'd., and Mountain Timber Company, and to each of them, in the penal sum of One Thousand (\$1,000.00) Dollars, to the payment of which, well and truly to be made, we bind ourselves, successors and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated this 3d day of January, 1916.

The condition of the above obligation is such that, WHEREAS, heretofore, to wit, on the 6th day of July, 1915, the said Geo. B. Burke and E. N. Ferris, as administrator of the Estate of David L. Kelly, dec'd., in the above-entitled court and cause were awarded a decree against the U. S. Fidelity & Guaranty Company for the sum of Forty-four Thousand, One Hundred and Twenty-eight (\$44,128.00) Dollars, with interest and \$312.00 costs, from which said decree of said Court, the said U. S. Fidelity & Guaranty Company is appealing to the U. S. Circuit Court of Appeals, for the Ninth Circuit.

Now, if the said UNITED STATES FIDELITY & GUARANTY COMPANY, shall well and truly prosecute said appeal to effect and pay all damages,

costs and disbursements which may be awarded to the premises in this bond, or either, or any of them, against the said appellant on said appeal, then the above obligation shall be null and void; otherwise and in the event the said appellant fails to make good its plea on appeal, to be and remain in full force and virtue.

U. S. FIDELITY & GUARANTY CO.

By DOUGLAS R. TATE,  
Its Attorney in Fact.

NATIONAL SURETY COMPANY.

By MARC HUBBARD,  
Res. Vice-prest.

Attest: M. S. H. CROWE,  
Res. Asst. Sec.

In presence of:

C. E. HICKS.  
ROSCOE C. NELSON.

Approved:

WM. B. GILBERT,  
Judge of the U. S. Circuit Court of Appeals for the  
9th Circuit. [19]

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*In the United States District Court for the Western  
District of Washington, Southern Division.*

GEO. B. BURKE, and E. N. FERRIS, as Adminis-  
trator of the Estate of DAVID L. KELLY,  
Dec'd.,

Plaintiffs,

v.

MOUNTAIN TIMBER COMPANY, a Corporation,  
Defendant.



**Citation [on Appeal (Copy)].**

United States of America,—ss.

To Geo. B. Burke, E. N. Ferris, Administrator of the  
Estate of David L. Kelly, Deceased, and to  
Mountain Timber Company:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California, on the 1st day of February, 1916, pursuant to the appeal filed in the clerk's office of the District Court of the United States for the Western District of Washington, Southern Division, in the above-entitled cause *herein*, the U. S. Fidelity & Guaranty Company is appellant and Geo. B. Burke and E. N. Ferris, administrator of the estate of David L. Kelly, and Mountain Timber Company, are respondents, to show cause, if any there be, why the decree in the petition and allowance of appeal mentioned should not be corrected and speedy justice [20] should not be done to the parties on their behalf.

WITNESS the Honorable W. B. GILBERT, Judge of the United States Circuit Court of Appeals, for the Ninth Circuit, this 3d day of January, 1916.

Sgd.—WM. B. GILBERT,  
Circuit Judge.

I hereby this 3d day of January, 1916, accept due

personal service of this citation on behalf of Geo. B. Burke.

Sgd.—A. E. CLARK,  
Of Attorneys for Geo. B. Burke.

M. J. GORDON,  
Of Attorneys for E. W. Ferris.

COY BURNETT,  
Of Attorneys for Mountain Timber Co.

BEACH, SIMON & NELSON,  
Attorneys for Appellant, U. S. Fidelity & Guaranty  
Co.

A. E. CLARK,  
Of Attorneys for Geo. V. Burke and E. W. Ferris,  
Administrator of the Estate of David L. Kelly,  
Decd.

COY BURNETT,  
Attorney for Mountain Timber Co.

Approved:

EDWARD E. CUSHMAN,  
Judge of the United States District Court for the  
Western District of Washington, Southern Di-  
vision.

(Filed Jan. 28th, 1916.) [21]

*In the District Court of the United States for the  
District of Washington, Southern Division.*

No. 3—E.

GEORGE B. BURKE and E. W. FERRIS, as Ad-  
ministrator of the Estate of DAVID L.  
KELLY, Deceased,

Plaintiffs,

v.

MOUNTAIN TIMBER COMPANY, a Corporation,  
Defendant.

**Decree.**

This cause being at issue, and being regularly upon the trial calendar of this Court, came on for hearing and determination on the 12th day of January, 1915, and was tried upon that day and succeeding days. The cause was tried before the Court without a jury (it being a cause in equity), Honorable E. E. Cushman, Judge presiding.

The plaintiffs appeared by their attorneys, M. J. Gordon and A. E. Clark. The defendant appeared by its attorneys E. C. Strode and Coy Burnett.

The Court being at this time fully advised in the premises, and said cause now coming on upon application for a decree, it is

CONSIDERED, ORDERED AND DECREED that the plaintiffs George B. Burke and E. W. Ferris, as administrator of the Estate of David L. Kelly, deceased, have and recover and from the defendant Mountain Timber Company and the United States Fidelity & Guaranty Company, of Baltimore, Maryland, the sum of \$32,500.00, and interest thereon at



the rate of 5% per annum from the 3d day of February, 1910; and the further sum of \$2,500.00 as attorney's fees, allowed to the plaintiffs in [22] this cause; and the further sum of \$312.40 taxed and allowed herein as costs and disbursements, making in all the sum of \$44,128.00; and it is further ordered that this judgment bear interest at 5% until paid or satisfied.

CONSIDERED, ORDERED and DECREED, that the mortgage described in the complaint, and in the supplemental complaint in this cause, be foreclosed, according to law, and the rules and practice of this Court; and that the following real estate described therein, be sold to satisfy the amount of the aforesaid judgment, to wit:

The East Half of the East Half of Section Nine (9); the West Half of the Northwest Quarter, the Southwest Quarter, and the West Half of the Southeast Quarter of Section Ten (10), the Southwest Quarter of Section Eleven (11), the North Half, the Southwest Quarter of Section Fourteen (14), all in Township Six (6), North, Range One (1) West of Willamette Meridian, excepting a certain reservation for a schoolhouse site in Section Nine (9), now appearing on the records, all situated in the county of Cowlitz, State of Washington.

That the proceeds of said sale, or so much thereof as may be necessary, shall be applied to the payment of the amount hereinbefore adjudged and decreed to be due to the plaintiffs; and that plaintiffs may have general execution against any of the property of the

said defendant Mountain Timber Company, and the said United States Fidelity & Guaranty Company, for any deficiency remaining after the application upon said judgment of the proceeds of said sale; and it is further

CONSIDERED, ORDERED and DECREED, that said premises shall be sold free and clear of any right, interest, estate, lien or claim of said defendant, or any person claiming by, through or under it, save and except the right of redemption as by law provided; and it is further,

CONSIDERED, ORDERED and DECREED, that plaintiffs may [23] become a purchaser of said property upon said foreclosure sale, and that the purchaser at said foreclosure sale shall be let into possession of said mortgage premises upon the confirmation of said sale.

Dated this 6th day of July, 1915.

EDWARD E. CUSHMAN,

Judge.

(Filed July 6, 1915.) [24]

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**[Certificate of Clerk U. S. District Court to  
Transcript of the Record, etc.]**

United States of America,  
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return the foregoing and attached to be a true, full and correct transcript of the papers and proceedings in the case of George B.

Burke and E. W. Ferris, as Administrator of the Estate of DAVID F. KELLY, Deceased, vs. MOUNTAIN TIMBER COMPANY, a Corporation, lately pending in this court, pursuant to stipulation of counsel herein filed, being the appeal of the United States Fidelity & Guaranty Company, a corporation, herein, as the originals thereof appear on file in this Court, at Tacoma, in the District aforesaid

I further certify that I have attached hereto the original citation and original order extending time for transcript on appeal.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid into my office by and on behalf of the appellant herein, for making the record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit, to wit:

Clerk's fees (sec. 828, R. S. U. S.) for	
making record, certificate and re-	
turn, 63 folios at 15¢ ea.....	9.45
Clerk's certificate to transcript, 2 folios	
and seal .....	50

[25]

ATTEST MY OFFICIAL SIGNATURE, AND THE SEAL OF THIS COURT, at Tacoma, in the District aforesaid, this 31st day of January, A. D. 1916.

[Seal]

FRANK L. CROSBY,  
Clerk.

By E. C. Ellington,  
Deputy Clerk. [26]



*In the United States District Court for the Western  
District of Washington, Southern Division.*

GEO. B. BURKE, and E. W. FERRIS, as Ad-  
ministrator of the Estate of DAVID L.  
KELLY, Deceased,

Plaintiffs,

v.

MOUNTAIN TIMBER COMPANY, a Corporation,  
Defendant.

**Citation [on Appeal (Original)].**

United States of America,—ss.

To Geo. B. Burke, E. N. Ferris, Administrator of the  
Estate of David L. Kelly, Deceased, and to  
Mountain Timber Company:

You are hereby cited and admonished to be and  
appear before the United States Circuit Court of  
Appeals, for the Ninth Circuit, at San Francisco,  
California, on the 1st day of February, 1916, pur-  
suant to the Appeal filed in the Clerk's Office of the  
District Court of the United States for the Western  
District of Washington, Southern Division, in the  
above-entitled cause, wherein, the U. S. Fidelity  
& Guaranty Company is appellant, and Geo. B.  
Burke and E. W. Ferris, Administrator of the Estate  
of David L. Kelly, and Mountain Timber Company,  
are Respondents, to show cause, if any there be,  
why the decree in the petition for and allowance of  
appeal mentioned should not be corrected and speedy  
justice should not be done to the parties on that be-  
half. [27]

WITNESS the Honorable W. B. GILBERT,  
Judge of the United States Circuit Court of Appeals,  
for the Ninth Circuit, this 3d day of January, 1916.

WM. B. GILBERT,

Circuit Judge. [28]

I hereby, this 3d day of January, 1916, accept due  
personal service of this Citation on behalf of Moun-  
tain Timber Company.

COY BURNETT,

Of Solicitors for Mountain Timber Co.

I hereby, this 3d day of January, 1916, accept due  
personal service of this Citation on behalf of Geo. B.  
Burke.

A. E. CLARK,

Of Solicitors for Geo. B. Burke.

I hereby, this 4th day of January, 1916, accept due  
personal service of this Citation on behalf of E. W.  
Ferris, as Admr. of the Estate of David L. Kelly,  
dec'd.

M. J. GORDON,

Of Solicitors for E. W. Ferris, Admr. of David L.  
Kelly, Decd. [29]

[Endorsed]: In the U. S. District Court for the  
Western District of Washington, Southern Division.  
Geo. B. Burke, and E. N. Ferris, as Admr. of the  
Estate of David L. Kelly, Deceased, Plaintiffs v.  
Mountain Timber Co., a Corporation, Defendant.  
Citation. Filed in the U. S. District Court, Western  
Dist. of Washington, Southern Division. Jan. 4,  
1916. Frank L. Crosby, Clerk. By F. M. Harsh-  
berger, Deputy.

*In the United States Circuit Court of Appeals, for  
the Ninth Judicial Circuit.*

No. —.

UNITED STATES FIDELITY & GUARANTY  
COMPANY, a Corporation,

Appellant.

vs.

GEORGE B. BURKE and E. W. Ferris, as Admin-  
istrator of the Estate of DAVID L. KELLY,  
Deceased, and MOUNTAIN TIMBER COM-  
PANY, a Corporation,

Appellees.

**Order Extending Time for Transcript on Appeal.**

For good cause shown it is now ORDERED that the time within which the record on appeal in the above-entitled case may be filed in this court at San Francisco, California, be and the same is hereby extended to and including the 25th day of February, A. D. 1916.

Dated this 28th day of January, A. D. 1916.

EDWARD E. CUSHMAN,  
District Judge for the Western District of Washing-  
ton.

[Endorsed]: Filed in the U. S. District Court,  
Western Dist. of Washington, Southern Division.  
Jan. 28, 1916. Frank L. Crosby, Clerk. By F. M.  
Harshberger, Deputy.



[Endorsed]: No. 2744. United States Circuit Court of Appeals for the Ninth Circuit. United States Fidelity & Guaranty Company, a Corporation, Appellant, vs. George B. Burke and E. W. Ferris, as Administrator of the Estate of David L. Kelly, Deceased, and Mountain Timber Company, a Corporation, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Southern Division.

Filed February 4, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.



United States  
Circuit Court of Appeals  
For the Ninth Circuit

UNITED STATES FIDELITY & GUARANTY  
COMPANY, a Corporation,

Appellant,

vs.

GEORGE B. BURKE and E. W. FERRIS, as  
Administrator of the Estate of DAVID L.  
KELLY, Deceased, and MOUNTAIN TIMBER  
COMPANY, a Corporation,

Appellees.

APPELLANT'S BRIEF.

Upon Appeal from the United States District Court for  
the Western District of Washington,  
Southern Division.

BEACH, SIMON & NELSON, Attorneys for Appellant.  
GORDON & EASTERDAY,

A. E. and M. H. CLARK,

Attorneys for Appellees, BURKE & FERRIS.

COY BURNETT and E. C. STRODE,

Attorneys for Appellee, MOUNTAIN TIMBER CO.

Filed

APR 24 1916





NO. 2744

United States  
Circuit Court of Appeals  
For the Ninth Circuit

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UNITED STATES FIDELITY & GUARANTY  
COMPANY, a Corporation,

Appellant,

vs.

GEORGE B. BURKE and E. W. FERRIS, as  
Administrator of the Estate of DAVID L.  
KELLY, Deceased, and MOUNTAIN TIMBER  
COMPANY, a Corporation,

Appellees.

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APPELLANT'S BRIEF.

Upon Appeal from the United States District Court for  
the Western District of Washington,  
Southern Division.

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STATEMENT OF FACTS.

Appellees, Burke and Ferris, were complainants in this suit instituted in the United States District Court for the Western District of Washington, Southern Division, to foreclose a mortgage which had been executed by the Mountain Timber Company to secure payment of the sum of \$32,500.00. The mortgage covered a tract of timber land in Cowlitz County, Washington.

Subsequently to the institution of the suit the complainants filed a motion for a temporary injunction to restrain the defendant, Mountain Timber Company, from cutting or removing any timber then upon the premises described in the Bill, the basis for the application being the expressed fear of complainants that half of the timber standing upon the land at the time of the execution of the mortgage having been cut and removed therefrom, the continuation of that process would denude the land of all its timber, with the result that complainants' security would be inadequate to satisfy the amount of indebtedness, and that a deficiency judgment which complainants might obtain in the suit might be uncollectible because of the existing or prospective insolvency of the defendant, Mountain Timber Company.

A stipulation was thereafter entered into between the parties reciting the fact that the defendant had filed a bond in the sum of \$45,000 with the U. S. Fidelity & Guaranty Company (Appellant herein) as surety, guaranteeing the payment of any judgment which might be rendered in favor of the Complainants in the suit, and that in consideration thereof Complainants withdrew their application for injunction. (Transcript of Record, pp. 9-19). The Bond referred to in the stipuation is as follows (Transcript of Record, pp. 10-11):

"In the District Court of the United States for the Western District of Washington, Southern Division.

GEORGE B. BURKE,  
Plaintiff,

v.

MOUNTAIN TIMBER COMPANY,  
a Corporation,  
Defendant.

WHEREAS, in the above entitled



court and cause plaintiff above named, on the 25th day of April, 1913, filed his complaint asking judgment against the defendant for the sum of thirty-two thousand five hundred (\$32,500.00) dollars, together with interest thereon at 5% from the 3d day of February, 1910, with attorney's fees, and in said complaint prayed for a temporary and permanent injunction enjoining the defendant from further cutting the timber upon lands described in said complaint;

NOW, THEREFORE, we, Mountain Timber Company, a Corporation, as principal, and United States Fidelity & Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound unto George B. Burke in the penal sum of forty-five thousand (\$45,000.00) dollars for the payment of which, well and truly to be made, we hereby bind ourselves, our successors or assigns, provided, and the condition of this obligation is such that if Mountain Timber Company shall pay, or cause to be paid, in full any judgment which shall be rendered in favor of the plaintiff in the above entitled action, then this undertaking to be null and void, otherwise to be and remain in full force and effect.

Dated this 3d day of May, 1913.

Sgd. MOUNTAIN TIMBER COMPANY, by COY BURNETT, Principal.

Sgd. U. S. FIDELITY & GUARANTY COMPANY, by JOHN C. STANTON,

By Attorney in Fact,  
Surety.

(S. Corporate Seal.)

The plaintiff consenting to the form and sufficiency thereof, this bond is hereby allowed and approved.

Dated May 5, 1913.

Sgd. EDWARD E. CUSHMAN,  
Judge."

The District Court subsequently entered a foreclosure decree against the defendant, Mountain Timber Company, but instead of merely ascertaining therein the amount due upon the mortgage indebtedness, directing a sale, and providing for judgment in favor of the Complainants for any deficiency, the Judge of the District Court awarded judgment against the Mountain Timber Company and the U. S. Fidelity & Guaranty Company jointly for the sum of \$44,128.00 representing the entire amount of original mortgage indebtedness, interest, attorney's fees, and costs, and proceeded to direct the foreclosure of the mortgage. (Transcript of Record, pp. 28-30.)

The Appellant, U. S. Fidelity & Guaranty Company, was at no time a party to the suit. It was afforded no opportunity to be heard, and had no notice of the contemplated judgment against it, except that a notice to the effect that same would be applied for on July 6, 1915, at the Court Room of said Court in Tacoma, Washington, was left with a clerk in the office of the statutory agent of Appellant, for the State of Oregon, at Portland, Oregon, on July 2, 1915. (Transcript of Record, p. 17.)

Upon the ground that the entry of this judgment against the U. S. Fidelity & Guaranty Company was unauthorized, said Company perfected this appeal and now urges said lack of authority, in addition to plain er-

rors manifest upon the face of the record, as ground for a reversal of said judgment insofar as same concerns this Appellant.

## POINTS AND AUTHORITIES.

### I.

In a suit to foreclose a mortgage the Court cannot, in advance of sale, render judgment for the full amount claimed to be due, but its power is limited to the rendering of a judgment for the deficiency remaining after the sale and application of the proceeds.

Jones on Mortgages, 7th Ed. Vol. 3, p. 370;  
 Dudley v. Congregation, 138 N. Y. 451; 34 N. E. 281;  
 Hull v. Young, 29 S. C. 71;  
 Parr v. Lindler, 40 S. C. 193; 18 S. E. 636;  
 Bailey v. Block, 104 Tex. 101; 134 S. W. 323;  
 Dodge v. Freedman's etc. Co., 106 U. S. 445; 27 L. Ed. 206;  
 Noonan v. Braley, 2 Black 499; 17 L. Ed. 278;  
 Orchard v. Hughes, 1 Wall. 73; 17 L. Ed. 560;  
 Rule 10 of Rules of Practice for Courts of Equity of the U. S.

### II.

The so-called judgment herein being beyond the power of the court, it must be construed to be a mere ascertainment of the amount due by the Mountain Timber Company, mortgagor, as a necessary step in the foreclosure proceedings.

By fair and necessary interpretation the language of



the bond covers the payment of deficiency judgment only, since that is the only kind of judgment which could lawfully be rendered in foreclosure proceedings.

Barnes v. Chicago, etc. R. R. Co., 122 U. S. 1;  
30 L. Ed. 1128;

Graham v. LaCrosse etc. R. R. Co., 70 U. S. (3  
Wall.) 704; 18 L. Ed. 247;

Beach—Modern Eq. Prac., Vol. 2, p. 810.

Crocker v. Currier, 65 Wis. 667.

### III.

The bond herein is not a statutory bond nor executed pursuant to, or in compliance with any Rule or Order of Court as a condition imposed by the Court upon the parties, and under such circumstances, the surety on the bond was not a party to the proceedings and an independent action was necessary to enforce liability upon the bond. Or, at least ancillary proceedings in this case were required, in which the surety would be entitled to proper notice, and to its day in court.

Beall v. New Mex., 16 Wall. 535; 21 L. Ed. 292;

Babbitt v. Shields, 101 U. S. 7; 25 L. Ed. 820;

Smith vs. Gaines, 93 U. S. 341; 236 L. Ed. 901;

Crocker and another v. Currier, 65 Wis. 667;

Earl v. Cureton, 14 S. C. 19;

Leslie v. Brown, 32 C. C. A. 556; 90 Fed. 171;

Terry v. Robinson, 122 Fed. 725.

### ARGUMENT.

#### NATURE OF DECREE IN FORECLOSURE PROCEEDINGS.

Without citation of authority it may be premised

as a postulate in this discussion that a foreclosure suit is an extraordinary proceeding, and that foreclosure is an extraordinary remedy. In the absence of statute, or rules of court altering its scope, it is strictly a proceeding *in rem*, and the relief is confined to a subjection of the *res* to the indebtedness. An ordinary money "judgment," therefore, for the full amount of indebtedness, is a paradoxical expression in connection with a foreclosure suit. Jones in his work on Mortgages, 7th Ed., Vol. 3, at page 370, quotes with approval the following language of O'Brien, J., in *Dudley v. Congregation*, 138 N. Y. 451; 34 N. E. 281:

"It was never intended to permit the joinder in the same complaint of two separate causes of action, one at law to recover a personal judgment on the bond for a debt, and the other in equity to procure a sale of the land covered by the mortgage given to secure the same debt and the application of the proceeds thereon. \* \* \* \*

The established rule that when equity has obtained jurisdiction of the parties and the subject matter of the action, it may adapt the relief to the exigencies of the case, even to the extent of rendering a personal judgment, in order to prevent a failure of justice, does not apply here. That rule applies when the general basis of fact upon which equitable relief was sought has been made out, but for some reason it becomes impracticable to grant such relief, or where it would be insufficient, and not a case like this, where it appears that there never was in fact any ground for equitable relief whatever, but the sole remedy was an action at law."

In *Hull v. Young*, 29 S. C. 71, it was held that in

an action for foreclosure of a mortgage, no personal judgment for a debt, or any portion thereof, can be rendered against the mortgagor on his bond until after sale, and then only if the deficiency reported be unpaid. In delivering the judgment of the court the Chief Justice said:

“In an action like this, it seems to us that no personal judgment for any specific sum of money can be rendered, even against the mortgagor, until the mortgaged premises have been sold, and the proceeds applied to the mortgage debt, for he can only be called upon in such an action to pay any deficiency in the proceeds of sale of the property pledged by him for payment of the debt, and we do not see how such deficiency can be ascertained until the property has been sold and the proceeds applied, and hence we do not see how any judgment for any specific sum of money can be rendered until the amount of such deficiency has been thus ascertained.”

See to the same effect:

Rooney v. Moulton, 60 Ill. App. 306;  
 Parr v. Lindler, 40 S. C. 193; 18 S. E. 636;  
 Bailey v. Block, 104 Tex. 101; 134 S. W. 323;  
 Dodge v. Freedman Savings & Trust Co., 106  
 U. S. 445; 27 L. Ed. 206.

It is apparent therefore that the money judgment rendered by the District Court against the Mountain Timber Company was premature. The guaranty of the appellant Surety Company to pay any judgment



which would be rendered meant, of course, any lawful judgment. The liability of the surety could not be greater than that of its principal.

Parnell v. Hancock, 48 Cal. 452;

United States v. Burbank, 4 Wall. 186; 18 L. Ed. 321.

\* \* \* \* \*

If there were any doubt on this point it is absolutely removed *quoad* the Federal Courts by express decisions of the Supreme Court of the United States to the effect that in the absence of statute, or rules of court authorizing same, the Federal Courts do not have the power to award in a foreclosure suit a personal judgment, even for a deficiency remaining after sale and application of the proceeds.

Noonan v. Braley, 2 Black 499; 17 L. Ed. 278;

Orchard v. Hughes, 1 Wall. 73; 17 L. Ed. 560.

To obviate this difficulty a rule was adopted by the Supreme Court in 1864 permitting such deficiency judgment, and this rule appears in substance in the present RULES OF PRACTICE FOR THE COURTS OF EQUITY OF THE UNITED STATES; as

#### Rule 10.

#### “DECREE FOR DEFICIENCY IN FORECLOSURES, ETC.

In suits for the foreclosure of mortgages, or the enforcement of other liens, a decree may be rendered for any balance that may be found due to the plaintiff over and above the proceeds of the sale or sales, and execution may issue for the col-

lection of the same, as is provided in rule 8 when the decree is solely for the payment of money.”

If, therefore, there cannot be even a deficiency judgment in the Federal Courts in the absence of statute or rule, *a fortiori* there can be no personal judgment for the full amount in advance of sale. If the Federal Courts had the power to award such personal judgments there would be no reason for the existence of Rule 10, since the greater always includes the less. By the same token, the fact that the existence of such express authority was recognized by the United States Supreme Court as prerequisite to the lesser power, implies that, in the absence of similar authority, the greater is forbidden.

The entry, therefore, of a personal judgment against even the Mountain Timber Company at that stage of the proceeding was a palpable error, unless the language of the decree against the Mountain Timber Company be given the effect explained under the next heading of this discussion.

## II

### DECREES ARE TO BE CONSTRUED SO AS TO RENDER THEM VALID.—BOND COVERED PAYMENT OF DEFICIENCY JUDGMENT ONLY.

The rule of statutory construction, *ut res valeat magis quam pereat* is also applicable to decrees of courts.

In the language of the Supreme Court of the United States in *Barnes v. Chicago, etc., R. R. Co.*, 122 U. S. 1; 30 L. Ed. 1128:

“Every decree in a suit in equity must be considered in connection with the pleadings, and, if its language is broader than is required, it will be limited by construction so that its effect shall be such, and such only, as is needed for the purposes of the case that has been made and the issues that have been decided.”

And the same Court said in the case of *Graham v. La Crosse, etc., R. R. Co.*, 70 U. S. (3 Wall.) 704; 18 L. Ed. 247:

“The decree was evidently intended to determine that issue. \* \* \* It is our duty to construe the decree with reference to the issue it was meant to decide. Its words are very broad and very emphatic; but we cannot say that they were intended by the district court to have any greater effect than to avoid and set aside, as against Cleveland, the agreement and the judgment impeached by his bill. We think, on the contrary, that a decree having such an effect could not have been properly rendered upon the pleadings and issue in that cause.”

See to same effect *Beach Modern Eq. Prac.*, Vol. 3, p. 810.

The principle thus clearly announced was applied in a similar connection by the Wisconsin Court in *Crocker and another v. Currier*, 65 Wis. 667:

“The judgment commences in the usual form of personal judgments. It is



ordered and adjudged therein 'that the plaintiffs could have and recover of the defendant, John Currier, the said sum of \$255.81,' with costs. It is urged that this is a personal judgment in the first instance, which in such actions is unauthorized. An examination of the judgment shows that no execution is awarded for the sum specified, but the judgment proceeds to direct a sale of the property, and provides that on confirmation of the sheriff's report of sale, if there be a deficiency, the plaintiffs may have personal judgment therefor and execution. In view of these facts, the portion of the judgment above quoted was not intended to be and is not a personal judgment against the defendant for the whole sum found due the plaintiffs, but only an assessment of the sum so due, as required by Section 3324, R. S. A judgment in similar form, in an action to foreclose a mortgage, was so construed by this court in *Boynton v. Sisson*, 56 Wis. 40. See also *Huse v. Washburn*, 59 Wis. 414."

Applying this principle, then, to the decree in the instant case, in the light of the reasoning and authorities incorporated under the preceding heading of this discussion, that decree must be construed not as a personal judgment against the Mountain Timber Company for the full amount of its indebtedness to complainants below, but as an ascertainment of the amount due, in accordance with the procedure in equity prior to the sale under foreclosure, and it follows that no lawful judgment against the Mountain Timber Company for the recovery of money has yet been entered.

In view of the fact, then, that the bond was given to

guarantee the payment by the Mountain Timber Company of any judgment against it in the suit, it is manifest that the condition of the bond has not yet been broken. An inspection of the bond will disclose the fact that no consideration for the suretyship is expressed—no benefit conferred, and no detriment suffered. The validity of the bond, therefore, if it be a valid instrument, must depend upon the pleadings and upon extraneous documents such as the stipulation, and upon the circumstances under which it was executed. If these be considered, the meaning of the bond is quite clear. It guaranteed the payment of a *deficiency* judgment.

No guaranty was necessary for the payment to the Mountain Timber Company of that portion of the indebtedness which would be realized by the sale under foreclosure. The application for injunction was made because of the expressed fear that there would be a deficiency, and that the Mountain Timber Company might be insolvent and unable to pay the deficiency. The application was withdrawn in consideration of the furnishing of a bond, the purpose of which was plainly to guarantee the complainant against loss in the event of such a contingency. We submit to the Court that this is the only construction that could reasonably be placed upon the instrument.

In the affidavit which formed the basis of the application for the injunction, it is averred (Transcript of Record, p. 8) :

“That said defendant (Mountain Timber Company) is heavily involved in debt, and divers and numerous suits and actions are pending against them in which said suits and actions, if said defendant is unsuccessful, large judgments will be



secured against said defendant and will be prior liens to any *deficiency judgment* which might be obtained by said plaintiff in this action."

It is clear that the only judgment contemplated by the complainants was a deficiency judgment, and it was for the amount of this deficiency that the protection was desired.

That this fact was apparent to the Trial Court is indicated by the proviso in the Judgment Order in effect staying execution thereon until after the sale of the property, and limiting the scope of the execution to the deficiency remaining after the application upon the judgment of the proceeds of such sale. (Transcript of Record, pp. 29-30.)

If it be said that the appellant-surety suffers no injury so long as execution is withheld, we answer that that is no argument for permitting the entry of an unlawful judgment. The existence of such a judgment naturally affects the credit, standing, reserves, etc., of a surety company. It is also a fact that the courts have control of their own process (Freeman on Executions, Vol. 1, Sec. 32), and the same power which stays execution may thereafter withdraw the stay, and such action might be taken without notice to the judgment debtor. The appellant-surety objects to being placed in a position where such a contingency might at any time arise.

### III

INDEPENDENT PROCEEDING AGAINST  
SURETY NECESSARY TO ENFORCE LIA-  
BILITY—SURETY AT LEAST ENTITLED  
TO NOTICE AND DAY IN COURT.



The power of courts with regard to the terms of their judgments and decrees has limitations. One of these is ordinarily that the judgment be one coming fairly within the purview of the pleadings, and that when entered it is to be entered against a party defendant and not a stranger to the action.

There are exceptions to this rule, and these exceptions insofar as law actions are concerned, are based upon statute, and insofar as concerns the United States Courts sitting in equity, upon rules of court or real or supposed precedent under the rules of the English High Court of Chancery.

For instance, in an ordinary action at law, in the absence of express statute authorizing a different remedy, no judgment can be rendered in the original proceeding against the surety on a forthcoming or redelivery bond, or even on a supersedeas bond, but the injured party is relegated to his action at law upon the instrument:

Beall v. Terr. of New Mex., 16 Wall. 535; 21 L. Ed. 292;

Babbitt v. Shields, 101 U. S. 7; 25 L. Ed. 820;

Smith v. Gaines, 93 U. S. 341; 23 L. Ed. 901.

Where the bond is given pursuant to a statute authorizing the entry of judgment against the surety at the same time the judgment is entered against the principal, the theory on which the validity of such a proceeding is sustained is thus expressed by the Supreme Court of Oregon:

“When judgment is entered against a party, it must be conceded that it would bind him *if* the court rendering the judgment had *jurisdiction* of his *person* and of

the *subject* matter of the suit or action; and, such being the case, our *statutes* above referred to in effect provide that when the surety signs an undertaking on appeal and for a stay of proceedings he *forms a privity of contract* with the *judgment debtor*, and, like his principal, thereby becomes a *party* to and is bound by the judgment." (Italics ours.) *Holbrook v. Investment Co.*, 32 Or. 104, 106.

An apparent exception to this doctrine inheres in the practice obtaining in the Federal Courts where a temporary injunction is issued, conditioned upon filing a bond to pay damages resulting from the awarding of the injunction. Under the exceptional practice referred to, judgment, in the event of dissolution of injunction, is entered against the principal and surety on the bond. (This practice is said to be against the "undoubted weight both of authority and principle" by High on Injunction, 3 Ed. Sec. 1657; condemned as improper by Mr. Justice Curtis in Circuit, *Merryfield v. Jones*, 2 Curt. C. C. 306, Fed. Case No. 9486, and by the Supreme Court of the United States in *Bein v. Heath*, 53 U. S. (12 How.) 168; 13 L. Ed. 939, though approved, *obiter dicta* *Russell v. Farley*, 105 U. S. 433.)

A brief consideration of this exception will disclose the *rationale* of its existence. When a bill is filed for the purpose of enjoining defendants from the commission of certain acts the illegality of those acts is the primary matter for consideration in the case.

The Court, for the reason that prompt action is required and there is no time for taking of testimony or mature deliberation, grants provisional relief upon a condition which it imposes, i. e., that the defendant shall



not be harmed if it develop that the action of the Court is in contravention of his rights. Such a bond contains the explicit provision that the *obligors* will pay the damage awarded and ascertained to have arisen out of the unjustified restraint. It may almost be said that in practice the requirement and giving of the bond is a jurisdictional step, and the surety who joins with the plaintiff in such an obligation is in a measure, at least, a party privy to the suit. The Court which grants such extraordinary relief has the right to impose conditions, and it is upon this theory that the Federal Courts have assumed jurisdiction, where a bond is executed to conform to the order of Court as a condition precedent to the issuance of an injunction, to enter judgment against the plaintiff and his surety in the original case, upon dissolution of the injunction for the damages ascertained to have resulted.

It sometimes happens that a Court, impressed with the idea that the plaintiff is entitled to injunctive relief, at the outset of a case, but cognizant, nevertheless, of the fact that the results to the defendant, if same is granted, might be very serious, will enter an order to the effect that plaintiff is entitled to the temporary injunction prayed for, and that same shall issue unless the defendant shall within a certain fixed time file a bond guaranteeing to save the plaintiff harmless from the results of the contemplated course of action of the defendant, in the event same proves to be unlawful.

We have been unable to find a case in either the State or Federal Courts holding that judgment may be entered against the surety on such a bond in the same proceedings. Apparently the plaintiff under such circumstances is relegated to an ordinary action at law on the bond.



Even though it be argued, in the absence of authority, that there is no reason in principle why the Court which asserts authority to award a judgment against the surety on a bond required as a condition of awarding injunctive relief, should not exercise similar authority as to the surety on a bond required as a condition of denying injunctive relief, the fact is to be borne in mind that in the instant case the bond was *not* given pursuant to any such order of the Trial Judge, but pursuant to an agreement between the parties, and that, as a matter of fact, the application for injunction was actually *withdrawn* by complainant from the consideration of the Court. (Findings of Fact, Transcript of Record, p. 20.)

Under such circumstances the bond was, to all intents and purposes, a purely extraneous document, and the Court had no more authority to enforce its terms in the foreclosure suit than to enforce any other agreement made by any of the parties with outside persons with regard to any other matter, not comprehended in the pleadings.

\* \* \* \* \*

We have discussed this question of the power of the Court in cases of bonds executed as conditions of injunctive relief, because, in the absence of any explanation from the appellees of the basis for the judgment complained of, we have after, the exclusion of every other consideration, been compelled to assume that it must be in the mistaken belief that it was justified by some such analogy.

The rules of logic impress strongly the danger of argument from analogy. The resulting fallacy is here apparent in the fundamental difference pointed out between a bond exacted as a condition for injunctive

relief, and a bond, executed not in pursuance of an order of court requiring it, but by virtue of a private agreement.

The principle that parties are entitled to their day in court is one of such vast importance under our system of jurisprudence that it should not be frittered away by devising sophistical reasons for creating exceptions. Surely notice and an opportunity to be heard should be afforded before judgment is entered against one not a party to the cause. Had such an opportunity been afforded in the present instance to appellant-surety, the attention of the Court could have been directed to the reasoning and authority hereinbefore cited, which apparently demonstrates the fact that the only judgment which could have been lawfully entered at that stage of the proceedings was one merely ascertaining the amount due, and that the only judgment, payment of which the surety guaranteed, was a deficiency judgment—that the decree of the Court was not in any proper sense a personal judgment against the Mountain Timber Company within the terms of the bond.

As said by the South Carolina Court in *Earl v. Cureton*, 14 S. C. 19, where judgment was entered against one who had become surety for costs:

“The obligation of C. in this case did not waive the right of defense or furnish any authority for taking a judgment against him without a regular action to charge him thereunder.”

And it would seem the better opinion that even where judgment is given on a bond required as a condi-

tion for injunctive relief, notice of the proposed action should be given the surety.

Leslie v. Brown, 32 C. C. A. 556; 90 Fed. 171;  
Terry v. Robinson, 122 Fed. 725.

No notice in any proper sense of the term was given the Surety Company in this case. The U. S. Fidelity & Guaranty Company is a Maryland corporation, with its principal office at Baltimore, Maryland. The bond was executed on behalf of the company at Tacoma, Washington, by its agent for the State of Washington, and the action was pending in the United States District Court at Tacoma.

On Friday, July 2nd, what is denominated a "Notice" that judgment would be applied for on July 6th, was served on a person termed in the return a "clerk" in the office of Douglas R. Tate, statutory agent of the company for the State of Oregon, at his office in Portland, Oregon.

An inspection of the calendar will disclose the fact that July 2nd was on a Friday. The 4th fell on Sunday, and the 5th (Monday) was celebrated as a legal holiday. A service under such circumstances on an individual having no contractual or other relations with the appellant-surety can scarcely be dignified by the term "Notice."

\* \* \* \* \*

## ANOMALOUS CHARACTER OF THE JUDGMENT—ANALYSIS OF THE SITUATION.

We have here a most anomalous situation. The principal, it must be conceded, cannot be compelled to pay the personal judgment until after the sale and the



ascertainment of the deficiency. The United States Supreme Court has said that the liability of the surety cannot exceed that of its principal. Nevertheless, apparently, under the terms of the Court's decree the surety can be so mulcted, provided the Court at any subsequent stage sees fit to cancel its stay of execution. We have, we believe, already pointed out with sufficient clarity that the fair construction of the bond is that it is a guaranty for payment of the deficiency judgment. We proceed now to an analysis of certain other aspects of the situation.

\* \* \* \* \*

The express condition of the bond creates liability on the surety in the event of the non-payment by the principal-defendant of the *judgment rendered in the foreclosure suit*. It cannot be contended, for instance, that under the terms of the bond a judgment could be awarded against the appellant-surety *before* a judgment had been awarded against the principal, the Mountain Timber Company. Liability upon the appellant-surety would not accrue until the existence of a lawful judgment, payment of which by the Mountain Timber Company was thus guaranteed.

All that could be claimed with regard to the liability of a surety must arise under a fair construction of the terms of its bond—such terms even though not strictly construed are certainly not given a remedial construction enlarging their scope by intendment. The appellant-surety never agreed that judgment might be awarded against it *simultaneously* with judgment against the principal-defendant. It only agreed to see to it that the principal-defendant paid the judgment against itself, and there could be no breach of this until *after* the *entry* of such a judgment *against* the *principal*

—yet the Trial Court entered judgment against the principal-defendant, and the appellant-surety *jointly*.

\* \* \* \* \*

Further analyzing the Court's action, it will be apparent that it was unauthorized for another fundamental reason.

It is to be borne in mind that the decree against the Mountain Timber Company ordering foreclosure is a decree entered, *not upon the bond*, but upon its obligation in the shape of a note for \$32,500.00, interest, etc. The obligation of the surety arises under *another* and *entirely different instrument*. If the judgment against the Mountain Timber Company is upon the bond, it forms no basis for the foreclosure, since the mortgage was executed to secure payment of a note for \$32,500 and not a bond for \$45,000.00. It is, of course, manifest, that the "judgment" (in reality the ascertainment of indebtedness) against the Mountain Timber Company is upon the mortgage note and this fact would preclude the idea of "joint" judgment on that instrument against the maker and a stranger to it.

There is here apparent another basic distinction between the awarding of judgment against the plaintiff and his surety on a bond conditioned for injunctive relief, and the awarding of judgment in this instance. Where a suit is brought in which the prayer is for a temporary injunction, and same is allowed the plaintiff upon condition of his filing his bond with proper surety to pay all damages which may be awarded because of the unlawful restraint thus imposed upon the defendant, the judgment against the plaintiff and surety is on the single obligation in the case, a joint obligation which for reasons heretofore adverted to may be said to be fairly within the purview of the pleadings.



In such a supposed case, where the doctrine referred to has been invoked in the Federal Courts, the judgment for such damages is the only judgment which is awarded against the plaintiff, and it grows out of the sole obligation in the case i. e., the bond given by him and his surety as a condition of getting the relief for which he prays. In the instant case, the bond, as before pointed out, is a matter separate and apart from the primary relief, i. e., *foreclosure*, and the judgment against the principal-defendant, Mountain Timber Company, is based *not upon the bond*, but upon the *mortgage indebtedness* which is being foreclosed.

The principal-defendant, the Mountain Timber Company, of course, signed the bond along with the appellant-surety, but that bond was an agreement to pay any judgment which might be rendered in the cause, and the judgment referred to was, of course, the judgment prayed for in the bill of foreclosure and *not a judgment on the bond*.

It would seem that any one of these many considerations would suffice to demonstrate the plain error of the lower Court in entering a personal judgment against the surety at this stage of the proceeding, and the resulting situation demonstrates the importance of allowing parties their day in court.

We respectfully urge, for the reasons hereinbefore stated, that insofar as the decree of the United States District Court for the Western District of Oregon, Southern Division, in this cause purports to award a personal judgment against the U. S. Fidelity & Guaranty Company, same be reversed.

Respectfully submitted,

BEACH, SIMON & NELSON,

Attorneys for U. S. Fidelity & Guaranty Company,  
Appellant.



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No. 2744.

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IN THE  
**United States Circuit  
Court of Appeals**

For the Ninth Circuit

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**UNITED STATES FIDELITY & GUARANTY  
COMPANY, A CORPORATION**

APPELLANT

VS.

**GEORGE B. BURKE AND E. W. FERRIS, AS  
ADMINISTRATOR OF THE ESTATE  
OF DAVID L. KELLY,  
DECEASED**

APPELLEES

---

**BRIEF OF APPELLEES**

GEORGE B. BURKE AND E. W. FERRIS

---

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON,  
SOUTHERN DIVISION.

---

**ALFRED E. CLARK  
M. J. GORDON  
I. E. SHRAUGER  
M. H. CLARK**

Attorneys for Appellees.

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**BEACH, SIMON & NELSON,**  
Attorneys for Appellant.

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No. 2744.

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IN THE  
**United States Circuit  
Court of Appeals**

For the Ninth Circuit

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UNITED STATES FIDELITY &  
GUARANTY COMPANY, a Cor-  
poration,

Appellant,

vs.

GEORGE B. BURKE and E. W. FER-  
RIS, as Administrator of the Estate of  
DAVID L. KELLY, Deceased, and  
MOUNTAIN TIMBER COM-  
PANY, a Corporation,

Appellees.

Brief of George B. Burke and E. W. Ferris, as  
Administrator, etc., Appellees.

**STATEMENT OF FACTS.**

This suit was brought by appellees, Burke and Ferris, to foreclose a mortgage given by Mountain Timber Company, to secure certain promissory notes executed by Mountain Timber Company, for the sum of \$32,500.00. These notes, and the mortgage given to secure the same, were dated February 3rd, 1910, and bore interest at the rate of 5 per cent per annum. There were two notes, each for the sum of \$16,250.00. One

matured February 3rd, 1911, and the other matured February 3rd, 1912. This suit was commenced in April, 1913. No part of the notes, either principal or interest, had been paid.

These notes were secured by a mortgage upon a tract of timber land in Cowlitz County, in the State of Washington.

The mortgage contained the following provisions:

“Provided that said mortgagor, company, hereby covenants and agrees to and with the said D. L. Kelly and his assigns, that any timber cut by said Mountain Timber Company, or its assigns, on any of the above described lands before full satisfaction and payment of this mortgage shall be paid for to said D. L. Kelly, or his assigns, at or before the time of cutting the same, at the rate of \$2.50 per thousand feet, according to the log scale or cruise made by a cruiser or scaler selected and agreed upon by the parties hereto, and the payments so made shall apply upon the amount due upon this mortgage.” (p. 4, Trs.)

In the complaint it was, among other things, alleged, in substance, that the chief value of the mortgaged premises, was the merchantable timber standing thereon; that the defendant had cut a large amount of timber from the premises, without complying with the above quoted provisions of the mortgage, and without making any payment whatever on account thereof; that

at the time of the commencement of the suit, the defendant was engaged in cutting and removing timber from the land; and threatens to, and will continue to cut and remove large quantities of timber from said premises unless restrained by the court, thus lessening and endangering the mortgage security; and unless enjoined by the court, defendant will cut and remove so much of the timber as to greatly impair, if not wholly destroy, the mortgage security aforesaid, etc. Complainants prayed for a temporary injunction, as well as a permanent injunction, against the further cutting of timber and consequent impairment of the security. (pp. 4 and 5, Trs.)

Immediately after the suit was commenced, a motion was made for a temporary injunction, supported by the bill of complaint, and the affidavit of F. G. Kelly (pp. 5, 6, 7 and 8, Trs.). The motion coming on to be heard on May 5th, 1913, the parties entered into a stipulation which recited that this suit had been commenced; that application had been made for a temporary injunction, etc., and then proceeded as follows:

“And Whereas, the defendant has this 5th day of May, 1913, filed in this court and cause, a bond in the sum of \$45,000.00, with the United States Fidelity & Guaranty Company, as surety thereon, conditioned for the payment in full of any judgment which may be rendered in favor of the plaintiff in this action; Now, Therefore, in consideration of the



filing of said bond, it is hereby stipulated and agreed:

First—That plaintiff's application for an injunction be, and the same is hereby withdrawn" (p. 9, Trs.).

Contemporaneously with the signing and filing of said stipulation, there was filed in the cause, a bond executed by Mountain Timber Company, and by the Appellant, U. S. Fidelity & Guaranty Company (p. 10, Trs.). This bond was filed to prevent the issuance of a temporary injunction, and to secure to the defendant, liberty to further impair and convert to its own use the security of the mortgage. In a sense, it was designed to stand in lieu of the security. In substance the surety contracted to stand with defendant in the suit and assume the whole obligation of and pay any judgment that might be recovered in the case against the principal. This is the construction given to the bond by learned counsel for appellant, who say at page 23 of their brief:

"The principal-defendant, the Mountain Timber Company, of course, signed the bond along with the appellant-surety, but that bond was an agreement to pay any judgment which might be rendered in the cause, etc."

In consideration of the filing of the bond, the application for a temporary injunction was withdrawn. A

brief history of these matters is contained in the supplemental complaint, portions of which are printed in the Transcript (pp. 12, 13, 14, Trs.).

On June 15th, 1915, Judge Cushman, before whom the cause was tried, filed an opinion which contained the following:

“The mortgage provided that any timber cut by defendant upon the mortgaged premises before full satisfaction of the mortgage, should be paid for at the rate of \$2.50 per thousand feet, at or before the time of cutting the same. There was no attempt to comply with this provision, before or after the making of these tenders, although a large amount of timber was cut and removed from the land. At the commencement of the suit, complainant Burke asked an injunction against further cutting of timber in such manner. To avoid the issuance of such injunction, the defendant, with the United States Fidelity & Guaranty Company as surety, executed a bond to the complainant Burke, in the amount of \$45,000.00, conditioned to pay any judgment executed herein.” (P. 14, Trans.)

Findings and decree were ordered in favor of the complainant.

Proposed Findings of Fact, Conclusions of Law and Decree, were prepared and served upon the defendant. The defendant, and U. S. Fidelity & Guaranty Com-

pany, appellant, were notified in writing on July 2d, 1915, that on July 6th, 1915, complainants would move for the signing and entering of the Findings of Fact, Conclusions of Law and Decree, so prepared and served, not only against Mountain Timber Company, but against said U. S. Fidelity & Guaranty Company (pp. 14, 15, 16 and 17, Trs.).

In the proposed Findings, which were subsequently signed and entered, the court, among other things, found, in accordance with the allegations of the complaint, that the mortgaged premises at the time of the execution of the mortgage were covered with standing merchantable timber, which constituted the principal value of the security; that the mortgage contained a provision requiring the defendant to pay \$2.50 per thousand feet for timber cut, to be applied upon the mortgage; that since the execution of the mortgage, the defendant cut and removed from the land a very large amount timber; that it had failed to perform the covenant in the mortgage above referred to; that it had not paid any sums whatsoever upon the mortgage debt, according to said covenant, or otherwise; that in the complaint, and likewise in the supplemental complaint, a temporary injunction was prayed for against the further cutting of the timber; that immediately after the suit was commenced, application was made upon the files, and supporting affidavits, for a temporary injunction; that a hearing was had upon said application; and, in connection with said hearing, and in consideration that the plaintiff would withdraw his application



for a temporary injunction, the defendant, as principal, and the appellant, as surety, duly executed and filed with the Clerk of this Court the bond, etc.

The court further found in substance, that, at the time of the commencement of the suit, and at the time of the application for a temporary injunction, and the execution of the bond, the defendant was engaged in cutting and removing the merchantable timber from the mortgaged premises; that there was still a large amount of timber thereon; that in consideration of the execution of the bond, the plaintiff did not seek to obtain a temporary writ of injunction, and the defendant was permitted to continue to cut and remove timber from the mortgaged premises; that after the execution of the bond, the defendant cut and removed a large quantity of timber from the mortgaged premises, and thus further diminished and impaired the security of the mortgage debt in a substantial amount, and that practically all the merchantable timber has been removed.

In the proposed conclusions of law the court found that plaintiffs were entitled to judgment against the defendant, Mountain Timber Company, and the United States Fidelity & Guaranty Company, for the full amount due, with costs and attorney fees, directed the entry of judgment of foreclosure and sale; directed that the proceeds of the sale be applied in satisfaction of the costs, disbursements and the mortgage; and provided that execution should issue against the defendant and the United States Fidelity & Guaranty Company for any deficiency (pp. 18, 19, 20 and 21, Trs.).

The proposed decree, which was subsequently entered, gave judgment in accordance with the conclusions of law, and the prayer contained in the complaint, and among other things provided,

“That the proceeds of said sale, or so much thereof as may be necessary shall be applied to the payment of the amount hereinbefore adjudged and decreed to be due to the plaintiffs and that plaintiffs may have general execution against any of the property of said defendant Mountain Timber Company and the said United States Fidelity & Guaranty Company for any deficiency remaining after the application upon said judgment of the proceeds of said sale” (pp. 28, 29 and 30, Trs.).

These proposed Findings, Conclusions and Decree, were all served sometime prior to their presentation to the court, and both the defendant, Mountain Timber Company, and the United States Fidelity & Guaranty Company, were notified in writing that, at the time and place specified in the notice, a motion would be made for the entry of such Findings, Conclusions and Decree. Neither defendant nor appellant appeared at the time and place stated in the notice, nor made any objection to the said findings, conclusions or decree, or the entry thereof. Appellant made no question in the District Court as to the propriety of the practice followed in entering judgment against it, made no motion or objection in that court; sought no ruling and took no exception to any proceeding therein; never suggested to the

District Court any lack of jurisdiction, or asked that court to purge its records of, what appellant now contends to be a void judgment. The decree was entered July 6, 1915. This appeal was filed January 3, 1916, or six months, lacking three days from date of decree; ample time to have suggested to the trial court any alleged defect, or irregularities resulting in disadvantage to appellant.

There is but a single assignment of error (pp. 22, 23, Trans.), and the precise point of the error assigned is thus stated:

“The error alleged refers only to so much of said decree as affects the U. S. Fidelity & Guaranty Company and the claim of error is based on the contention that the U. S. Fidelity & Guaranty Company was not a party to the suit, and that the said court had no jurisdiction in said cause to render the said judgment and decree, or any judgment or decree whatsoever against the said U. S. Fidelity & Guaranty Company.”

There are no assignments or specifications of error in the brief. The only matter which has any semblance to an assignment of error is the following contained in the statement of facts:

“Upon the ground that the entry of this judgment against the U. S. Fidelity & Guaranty Company was unauthorized, said company perfected this



appeal and now urges said lack of authority, in addition to plain errors manifest upon the face of the record, as ground for a reversal of said judgment in so far as the same concerns this appellant."

Many questions are discussed in the brief of appellant, as to the form of the judgment entered, the propriety of the practice followed by the District Court, the true construction of the judgment entered, etc. These questions, while perhaps having an academic interest, are hardly pertinent to the single question here presented for review by assignment, viz.: Was the appellant a stranger to the cause so that the District Court was wholly without jurisdiction to render any judgment or decree against it upon notice or otherwise?

However, when we come to our argument we will analyze, discuss and controvert the contentions advanced by counsel for appellant, and in the order in which they appear in their brief.

## POINTS AND AUTHORITIES.

### I.

ERRORS NOT ASSIGNED ACCORDING TO RULE 11 OF THIS COURT WILL BE DISREGARDED.

Lloyd v. Chapman, 93 Fed. 599.

Savings & Loan Society v. Davidson, 97 Fed. 697-702.

### II.

QUESTIONS NOT RAISED IN THE TRIAL COURT WILL NOT BE NOTICED, OR REVIEWED, ON APPEAL.

2 Cyc. 666; 667; 680.

### III.

STATE LAWS AND DECISIONS RELATING TO MORTGAGES, THE MANNER OF THEIR ENFORCEMENT, AND THE RESPECTIVE RIGHTS AND OBLIGATIONS OF THE PARTIES, ARE RULES OF PROPERTY WHICH WILL BE GIVEN EFFECT BY THE FEDERAL COURTS.

Clark v. Reyburn, 8 Wall. 318; 19 Law. Ed. 354.

Brine v. Hartford Insurance Co., 96 U. S. 627;  
24 Law. Ed. 858.

Bendey v. Townsend 109 U. S. 665; 27 Law. Ed. 1065.

## IV.

THE DECREE ENTERED IN THIS CASE  
COMPLIED IN FORM, AND IN SUBSTANCE,  
WITH THE LAWS OF WASHINGTON AND  
THE DECISIONS OF THE SUPREME COURT  
OF THAT STATE.

Pierce's Code, Secs. 1275, 1277, 1284 and 1286;

B. C. 5886, 5888, 5880 and 5889; R. & B.

Anno. C. & Stat. 1117, 1114, 1119 and 1120.

Shumway v. Orchard, 12 Wash. 104; 40 Pac. 634.

Rogers v. Turner, 19 Wash. 399; 53 Pac. 663.

State ex rel v. Superior Court, 34 Wash. 643;

76 Pac. 282.

Fuller & Co. v. Hull, 19 Wash. 400; 53 Pac. 666.

Bradley Engr. Co. v. Muzzy, 54 Wash. 227;

103 Pac. 37.

## V.

AND THE DECREE AS ENTERED COM-  
PLIED IN FORM, AND IN SUBSTANCE,  
WITH THE REQUIREMENTS OF EQUITY  
RULE 10, AND THE PRACTICE APPROVED  
BY THIS COURT, AND BY FEDERAL  
COURTS GENERALLY.

Equity Rule 10.

Seattle L. S. & E. Ry. Co. v. Union Trust Co.

79 Fed. 179. (Ninth C. C. A.)

Perry v. Tacoma Mill Co., 152 Fed. 115. (Ninth  
C. C. A.)



## VI.

THE BOND EXECUTED BY APPELLANT WAS IN EFFECT AN AGREEMENT TO PAY ANY JUDGMENT THAT MIGHT BE RENDERED IN THE CAUSE, AND ITS LIABILITY BECAME FIXED WHEN THE LIABILITY OF THE PRINCIPAL WAS FIXED.

*Oelrichs v. Williams*, 15 Wall. 211; 21 Law. Ed. 43-44.

*Washington Ice Co. v. Webster*, 125 U. S. 426-446; 31 Law Ed. 799-807.

*Moses v. United States*, 166 U. S. 600; 41 Law. Ed. 1130.

*Cyclone, etc., Plow Co. v. Vulcan Iron Works*, 52 Fed. 923-4.

## VII.

WHEN APPELLANT EXECUTED THE BOND FILED IN THIS CAUSE, IT BECAME A PARTY TO THE CAUSE. THENCEFORTH THE COURT HAD JURISDICTION OVER THE APPELLANT, AND WHEN THE LIABILITY OF THE PRINCIPAL WAS FIXED THE COURT HAD AUTHORITY UPON SUMMARY APPLICATION TO ENTER LIKE JUDGMENT, OR DECREE, AGAINST THE SURETY AS AGAINST THE PRINCIPAL.

*Russell v. Farley*, 105 U. S. 433; 23 Law. Ed. 1060.

*Brown v. N. W. Life Ins. Co.* 119 Fed. 149.

- s. c. Woolworth v. N. W. Life Ins. Co., 185  
U. S. 354; 46 Law. Ed. 945.
- Tyler, Etc., Mining Co. v. Last Chance Mining  
Co., 90 Fed. 15. (Ninth C. C. A.)
- Gordon v. Third National Bank, 56 Fed. 790.
- Empire State, Etc., Co. v. Hanley, 136 Fed. 99-  
103 (Ninth C. C. A.).
- Perry v. Tacoma Mill Co., 152 Fed. 115 (Ninth  
C. C. A.).
- Cimiotti Unhairing Co. v. American Fur Refin-  
ing Co. 158 Fed. 171-174.
- McCloskey v. Barr, 79 Fed. 408.
- Coosaw Mining Co. v. Farmers Mining Co., 51  
Fed. 107.
- Third National Bank v. Gordon, 53 Fed. 471.
- Sharp v. Schmidt & Zeigler, 62 Tex. 263.
- Corbett v. Pond, 10 App. D. C. 17-28.
- Hathaway v. Weeks, 34 Mich. 237-244.
- Council v. Averett, 90 N. C. 168.
- Smith v. Wilson, 18 Tex. Civ. App. 24; 44 S. W.  
556.
- Black v. Caruthers, 4 Humph. (25 Tenn.) 87.
- Wanters v. Van Horst, 28 N. J. Eq., 104 (1  
Stew.).
- Easton v. N. Y. Etc., Ry. Co., 30 N. J. Eq. 238  
(3 Stew.).
- Fears v. Riley, 147 Mo. 453-6.

## ARGUMENT.

## I.

ERRORS NOT ASSIGNED PURSUANT TO RULE 11 WILL BE DISREGARDED—BUT A SINGLE ASSIGNMENT, THAT BECAUSE APPELLANT NOT A PARTY THE COURT HAD NO JURISDICTION.

The only assignment of error filed in connection with this appeal is stated in these words:

“The error alleged refers only to so much of said decree as affects the U. S. Fidelity & Guaranty Company, and the claim of error is based on the contention that the U. S. Fidelity & Guaranty Company was not a party to the suit, and that the said court had no jurisdiction in said cause to render the said judgment or decree, or any judgment or decree whatsoever against the said U. S. Fidelity & Guaranty Company.”

The following is quoted from Rule 11 of this Court:

“The plaintiff in error, or appellant, shall file with the Clerk of the Court below with his petition for the writ of error or appeal an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged.”

1. If it be conceded that this assignment of error



is sufficient to present any question to this Court for review, clearly it presents no question other than that the Court had no jurisdiction to enter judgment against the appellant for the reason that appellant was not a party to the cause. That is the only point that can be said to be asserted with any degree of particularity. There is no assignment which challenges the correctness, or propriety, of any ruling, or proceeding, of the trial court during the progress of the case up to, and including the entry of decree. The filing of assignment of errors is an essential condition to the granting of a writ of error, or the allowance of an appeal. Errors not assigned according to Rule 11 will be disregarded. Of course, the Court may notice a plain error not assigned, but that is optional with the court, and does not flow as consequence from any right of the appellant, or any act, or omission, on its part.

Lloyd v. Chapman, 93 Fed. 599 (9th Circuit).

Savings & Loan Society v. Davidson, 97 Fed. 696-702 (9th Circuit).

The brief of the appellant contains no sufficient specification of errors, but merely includes in the statement of facts, a general recital to the effect that the entry of judgment against the appellant was unauthorized and that in addition, there are other plain errors manifest on the face of the record. This is in disregard of Rule 24 of this Court (sub-div. "b"), but even if it were otherwise, and exceptions were presented in the brief not

contained in the original assignments of error, they would be unavailing.

In *Lloyd v. Chapman*, 93 Fed. 600, this Court said:

“The filing of an assignment of errors is thus made an essential condition to the granting of a writ of error or the allowance of an appeal, and its purpose has been many times stated by the Courts. In *Doe v. Mining Co.*, 17 C. C. A. 196, 70 Fed. 456, this court said its purpose is “to apprise the opposite counsel and the court of the particular legal points relied upon for a reversal of the judgment of the trial court”; and, further, that “the attempt to make the assignment of errors more particular in a brief is not proper.” “It is in fact,” said the court, “an attempt to amend the record in this particular without the permission of court.” In *McFarlane v. Golling*, 22 C. C. A. 23, 24, 76 Fed. 24, the Circuit Court of Appeals for the Seventh Circuit said:

“The requirement of rule 11 (11 C. C. A. cii., 47 Fed. vi), that the assignment of errors shall be filed ‘with clerk of the court below, with the petition for the writ of error or appeal,’ was designed to bring into the record at that time a separate and particular statement of each error asserted and intended to be urged; and to a large extent the rule is a nullity if, under general and indefinite specifications like those quoted, the ap-

pellant may be able afterwards to bring forward objections to the decree or judgment, which, when error was assigned, had not been thought of.'

"In *Dufour v. Lang*, 4 C. C. A. 663, 54 Fed. 913, the Court said":

'The purpose of the rule is two-fold—to advise the adversary as to what he has to defend, and to aid the appellate court in reviewing the cause.' (p. 600)

2. It thus appears that, assuming appellant has properly assigned any error, it is that appellant was not a party to the cause and hence the District Court had no jurisdiction to enter any judgment against it. Counsel for appellant discuss a number of questions having no relation to the assigned error. Indeed, the major portion of their brief is directed to the question whether the trial court had authority to enter decree for the mortgage debt against the mortgagor, or any decree for deficiency, until after the sale of the mortgaged property and the application of the proceeds of the sale to the payment of the mortgaged debt; and to the further question as to the true scope and meaning of the decree entered. These matters are all far beyond the scope of the error assigned. They do not relate to the matter of jurisdiction over the person of the appellant. They



amount to nothing more than a complaint that the trial court departed from customary equity practice, disregarded equity rules and committed some judicial error in the form of the decree entered and the manner of its entry. While these complaints are in fact without merit, none of them go to the matter of jurisdiction over the person. They, in effect, merely assert that the trial court, in the exercise of its power and jurisdiction, committed error during the progress of the case. But error committed in the exercise of jurisdiction and during the progress of a cause, to be reviewable here, must be the subject of a motion, request or objection in the trial court upon the part of the complaining party, there must be a ruling with respect thereto, or a refusal to rule, there must be an exception duly noted, and such error must be properly assigned and properly presented to this court. Nothing of that kind appears in the record here presented.

3. If, however, appellant wishes to insist upon being heard with respect to the matters discussed in the brief, other than that appertaining to jurisdiction over its person, it must do so at the expense of waiving the jurisdictional question. A party may attack a judgment for a lack of jurisdiction over the person, without such attack per se, having the effect of a general appearance, but whenever a party attacks a judgment for lack of jurisdiction over the person, and for other reasons, such as error committed upon the trial, such party thereby enters a general appearance and waives objection to

jurisdiction over the person. There is manifest inconsistency in a party asserting that the court never had any jurisdiction over his person; that there never was any trial; and that no judgment within the purview of the law was ever entered, and at the same time insisting that, during the progress of the trial and in the exercise of its power and jurisdiction, the court committed error. If the appellant has properly assigned error, other than that going to the question of jurisdiction over the person, and has thus obtained the right to be heard upon such other matters, clearly it constitutes a waiver of the jurisdictional question, and the cause must then be disposed of as though the court had jurisdiction over the person of appellant; in which event the only matters for the consideration of this court would be those appertaining to alleged errors committed during the progress of the trial.

## II.

**THE DECREE PROPER IN FORM AND SUBSTANCE; COMPLIES WITH LAWS AND DECISIONS OF WASHINGTON; CONFORMS TO EQUITY RULE 10 AND TO PRACTICE APPROVED BY THIS COURT. NO PERTINENT ASSIGNMENT OF ERROR—FORM OF DECREE NOT JURISDICTIONAL.**

The first contention advanced by counsel for appellant is, in substance, that in a suit to foreclose, the Court cannot, in advance of sale, render judgment for the full



amount due, but that its power is limited to ascertaining the amount due and directing sale of the mortgaged property and the entry of any personal decree for deficiency, or otherwise, must be after sale. This objection of course has to do with the form of the decree rendered. It is a matter not properly before the court by assignment of error, and appellant is in no position to have such a question reviewed, while insisting that the court had no jurisdiction over its person. It is elementary that, in order to urge error occurring during the progress of a trial up to and including the entry of judgment or decree, the party must first concede the jurisdiction of the court over the person and subject matter. If the court entered a decree containing provisions which it should not have contained, that was but an erroneous exercise of judicial power over person, or subject matter, of which the court had jurisdiction, and correction of such errors upon appeal must be first preceded by proper objections, and exceptions, in the trial court and proper assignments here. All of these elements are absent. However, the contention that the decree was not proper in form in ascertaining the amount due upon the notes and mortgage debt, giving judgment for this amount, directing the sale of the land and the application of the proceeds to the debt, and authorizing execution for any deficiency, is wholly without merit. In support of their contention counsel cite a number of decisions by state courts and two or three decisions of the Supreme Court of the United States. The former decisions will not be reviewed or commented upon. If state laws and decisions furnish controlling precedents to the



Federal Courts sitting in equity within the respective states, then this question is settled adversely to appellant by the laws of Washington and the decisions of its highest court construing and applying them. Shortly we will refer to and point out the palpable inapplicability of the United States Supreme Court decisions cited by the appellant. The numerous citations of state laws, and text books of practice, written around these decisions, and the quotations from the opinions of state courts, plainly indicate that counsel for appellant entertain the view that state laws and state decisions may be of controlling force in regulating the mode of entering a judgment of foreclosure, the character of the judgment entered, and the rights and obligations thereby conferred, or imposed, upon the parties to the litigation.

1. State laws and state decisions are, in many instances, rules of property which must be respected and given effect by the Federal Courts, and these courts must regulate and modify their practice so as to give full force and effect to such laws. There is not a very well defined line of demarkation, in the adjudicated cases, between those laws, or decisions, classified as rules of practice and not controlling upon Federal Courts, and those classified as rules of property which must be given effect. In the instant case, the defendant executed two notes secured by a mortgage and likewise covenanted to pay the debt. These contracts were enforceable in, and were enforced in the State of Washington. The laws of Washington existing at the time these contracts

were entered into, and were enforced, of course, became a part of the contracts themselves, and conferred certain definite legal rights upon the complainant with respect to the form of decree that should be entered therein, the rights which followed the entry of the decree, and the mutual rights and obligations of the parties to the litigation thereafter. It may be fairly urged that these statutory provisions, which will be hereafter set out, are not mere rules of practice which may be disregarded by the Federal Courts, but are rules of property to which the Federal Court is bound to give full effect. It has been repeatedly held by the Supreme Court of the United States, and by the subordinate Federal Courts, that a mortgage is a conveyance; that its construction and its operation are determined by the laws of the state where given and enforced; that it appertains to real property, its incumbering and alienation, and that a Federal Court when called upon to enforce contracts of this character, must give full force and effect to the terms of the instrument, and the laws of the state, as well as the decisions of the highest court of the state where the contract is enforced.

In *Clark v. Reyburn*, 8 Wall. 318, 19 Law. Ed. 354, a mortgage foreclosure suit, the court had before it the construction of a mortgage, the rights conferred upon the mortgagee by the terms of the instrument, and the statutes of the state, and the character of the decree to be entered. Among other things, the court said:

“In this country the proceeding in most of the

states, and perhaps in all of them, is regulated by statute. The remedy thus provided when the mortgage is executed enters into the convention of the parties in so far that any change by legislative authority which affects it substantially, to the injury of the mortgagee, is held to be a law impairing the obligation of the contract within the meaning of the provision of the constitution upon the subject."

*Brine v. Hartford Insurance Company*, 96 U. S. 627, 24 Law. Ed. 858, a mortgage foreclosure case, discusses at length the question here involved and reviews the prior adjudications of the Supreme Court. It was there contended that various provisions of the Illinois statute, with respect to the character of the decree to be entered, the manner of sale, and the rights of the parties after sale, were rules of practice, not rules of property, and the Federal court sitting in equity might disregard them. After stating this contention the Court proceeds:

"On the other hand, it is said that the effect of the sale and conveyance made by the commissioner is to transfer the title of real estate from one person to another, and that all the means by which the title to real property is transferred whether by deed, by will, or by judicial proceeding, are subject to and may be governed by the legislative will of the State in which it lies, except where the law of the State on that subject impairs the obligation of a contract.



And that all the laws of a state existing at the time a mortgage or any other contract is made which affect the rights of the parties to the contract, enter into and become a part of it, and are obligatory on all courts which assume to give remedy on such contracts.

“We are of the opinion that the propositions last mentioned are sound; and if they are in conflict with the general doctrine of the exemption from state control of the chancery practice of the Federal Courts, as regards mere modes of procedure, they are of paramount force, and the latter must to that extent give way. It would seem that no argument is necessary to establish the proposition, that when substantial rights, resting upon a statute, which is clearly within the legislative power, come in conflict with mere forms and modes of procedure in the courts, the latter must give way, and adapt themselves to the forms necessary to give effect to such rights. The flexibility of chancery methods, by which it molds its decrees so as to give appropriate relief in all cases within its jurisdiction, enables it to do this without violence to principle. If one or the other must give way, good sense unhesitatingly requires that justice and positive rights, founded both on valid statutes and valid contracts, should not be sacrificed to mere questions of mode and form.

“Nor is it pretended that this court or any other Federal Court can, in such case, review a decree of the state court which gives the right to redeem. This is a clear recognition that nothing in that statute is in conflict with any law of the United States. If this be so, how can a court, whose functions rest solely in powers conferred by the United States, administer a different law which is in conflict with the right in question? To do so is at once to introduce into the jurisprudence of the State of Illinois the discordant elements of a substantial right which is protected in one set of courts and denied in the other, with no superior to decide which is right, *Olcott v. Bynum*, 17 Wall. 44 (84 U. S. XXI, 570); *Ex parte McNiel*, 13 Wall. 236 (80 U. S. XX, 624).” (861-2.)

\* \* \* \* \*

“We are not insensibe to the fact that the industry of counsel has been rewarded by finding cases even in this court in which the proposition that the rules of practice of the Federal Courts in suits in equity cannot be controlled by the laws of the States, is expressed in terms so emphatic and so general as to seem to justify the inference here urged upon us. But we do not find that it has been decided in any case that this principle has been carried so far as to deny to a party in those courts substantial rights conferred by the statute of a State, or to add to or take from a contract that which

is made a part of it, by the law of the State, except where the law impairs the obligation of a contract previously made. And we are of opinion that Chief Justice Taney expressed truly the sentiment of the court as it was organized in the case of *Bronson v. Kinzie*, as it is organized now, and as the law of the case is, when he said that 'All future contracts would be subject to such provisions, and they would be obligatory upon the parties in the courts of the United States as well as those of the States.' ” (pp. 862-3.)

In *Bendey v. Townsend*, 109 U. S. 665; 27 Law. Ed. 1065, a mortgage foreclosure case, the court said:

“The land is in Michigan, the notes and mortgage were made and payable in Michigan; and by the law of Michigan, as settled by repeated and uniform decisions of the Supreme Court of that State, a stipulation in a mortgage to pay an attorney's or solicitor's fee of a fixed sum is unlawful and void, and cannot be enforced in a foreclosure, either under the statutes of the State, or by bill in equity. *Bullock v. Taylor*, 39 Mich. 137; *Meyer v. Hart*, 40 Mich. 517; *Vosburgh v. Lay*, 45 Mich. 455; *Van Marter v. McMillan* 39 Mich. 304; *Botsford v. Botsford*, 49 Mich. 29. Upon such a question, affecting the validity and effect of a contract made and to be performed in Michigan, concerning land in Michigan, the law of the State must govern



in proceedings to enforce the contract in a Federal Court held within the State. *Brine v. Ins. Co.* 96 U. S. 627 (XXIV, 858); *Ins. Co. v. Cushman* (ante 648); *Equator Co. v. Hall* (ante 114).” (p. 1066.)

2. We quote now certain provisions of the laws of the State of Washington in force when the notes and mortgage involved in this suit were executed and which since then have continued in force.

“When there is no express agreement in the mortgage nor any separate instrument given for the payment of the sum secured thereby, the remedy of the mortgagee shall be confined to the property mortgaged.”

(*Pierce's Code Sec. 1275; B. C. 5886; R. & B. Anno. Code & Stat. 1117.*)

“When there is an express agreement for the payment of the sum of money contained in the mortgage or any separate instrument, the court shall direct in the decree of foreclosure that the balance due on the mortgage, and the costs which may remain unsatisfied after the sale of the mortgaged premises, shall be satisfied from any property of the mortgage debtor.”

(Pierce's Code, 1277; B. C. 5888; R. & B. Anno. C. & Stat. 1119.)

“The mortgagee or holder of the lien may proceed upon his mortgage or lien; if there be a separate obligation in writing to pay the same, secured by said mortgage or lien, he may bring suit upon such separate promise. When he proceeds on the mortgage, if there be a specific agreement therein contained for the payment of a certain sum, or there is a separate obligation for the said sum, in addition to a decree of sale of mortgaged property, judgment shall be rendered for the amount due upon said mortgage or other instrument, the payment of which is thereby secured. The decree shall direct the sale of the mortgaged property, and if the proceeds of said sale be insufficient under the execution, the sheriff is authorized to levy upon and sell other property of the mortgage debtor, not exempt from execution, for the sum remaining unsatisfied.

(Pierce's Code 1284; B. C. 5880; R. & B. Anno. C & Stat. 1114.)

“Judgments over for any deficiency remaining unsatisfied after the application of the proceeds of sale of mortgaged property, either real or personal, shall be similar in all respects to other judgments for the recovery of money, and may be made a lien

upon the property of a judgment debtor as other judgments, and the collections thereof enforced in the same manner.”

(Pierce’s Code 1286; B. C. 5889; R. & B. Anno. C & Stat. 1120.)

Construing these code provisions the Supreme Court of Washington has held that, in a foreclosure suit, where there is contained in the mortgage an express agreement to pay the mortgage debt, or such an agreement is contained in a separate instrument, such as a note, the plaintiff has the legal right to have personal decree entered against the mortgagor, as a part of the decree foreclosing the mortgage and directing the sale of the mortgaged property. This, of course, is a very substantial right.

Shumway v. Orchard, 12 Wn. 104; 40 Pac. 634.  
 Rogers v. Turner, 19 Wash. 399; 53 Pac. 663.  
 State Ex rel v. Superior Court, 34 Wash. 643;  
 76 Pac. 282.

And the same court has held that the judgment against the mortgage debtor becomes a lien upon his general property as soon as it is entered, among other things, saying:

“It is next urged that a judgment against mortgagors, rendered in a decree of foreclosure, does



not become a lien upon the general property of the judgment debtors until after the mortgaged premises are exhausted, and then only in the event that there is a deficiency. This position is not well taken. *Hays v. Miller*, 1 Wash. Ter. 143. *Shumway v. Orchard*, 12 Wash. 104; 40 Pac. 634.”

*Fuller & Co. v. Hull*, 19 Wash. 400; 53 Pac. 666.

The foregoing code provisions, as construed by the cases cited, have not been modified by subsequent legislation. *Bradley Engineering Co. v. Mussy*, 54 Wash. 227; 103 Pac. 37.

These statutory provisions are not mere rules of practice. They are rules of property. They confer definite and valuable rights which should be given full recognition by the Federal Court sitting within the state, and to that end the court should modify and conform its modes of practice and procedure so that in the decree entered the complainant would be given such relief, and be protected in such rights, as his contract and the laws of the state guarantee to him. The decree entered in the case at bar gave substantial effect to these state laws and state decisions. And we will now undertake to show that the decree in form is in accord with the practice approved by the Federal Courts, particularly this court, independently of any statute and by virtue of the Equity Rules.

3. The decree entered in the present case, violates

no Federal rule of practice, and is not in conflict with the mode of procedure usually followed. We have already stated that it would not be profitable to review, or comment upon, the decisions of the state courts touching the contentions of appellant now under discussion, for the reason that if state laws and the state decisions are pertinent, the laws and decisions of the State of Washington directly support the decree in the form entered. There are cited by counsel, however, the following decisions of the Supreme Court of the United States, viz.:

Dodge v. Freedman, 106 U. S. 445; 27 L. Ed. 206.

Noonan v. Braley, 2 Black, 499; 17 L. Ed. 278.

Orchard v. Hughes, 1 Wall. 73; 17 L. Ed. 560.

The Dodge case, *supra*, merely involved the construction of section 808, Revised Statutes, relating to the District of Columbia; it briefly states that the statute applied to foreclosure of deeds of trust, and that the decree entered conformed to its provisions.

The Noonan case (1862), *supra*, holds that in the absence of a rule of the Supreme Court, the trial court erred in entering a personal decree against the mortgagor, as a part of the decree which foreclosed the mortgage and directed a sale of the property. Up to that time no rule had been promulgated. There is a general statement to the effect that the practice of federal

courts, sitting in equity, are regulated entirely by rules promulgated by the Supreme Court. No state statute, or rule announced by a state supreme court, was involved.

The Orchard case, *supra*, decided a year or two later, was ruled by the Noonan case.

In 1864, the Supreme Court promulgated a rule, then numbered 92, which, in substance, appears as rule 10, in the rules of practice promulgated by the Supreme Court, November 4th, 1912. It is as follows:

“In suits for the foreclosure of mortgages, or the enforcement of other liens, a decree may be rendered for any balance that may be found due to the plaintiff over and above the proceeds of the sale or sales; and execution may issue for the collection of the same, as is provided in rule 8, when the decree is solely for the payment of money.”

In *Seattle L. S. & E. Ry. Co. v. Union Trust Company*, 79 Fed. 179, decision by Judge Ross, concurred in by Judge Gilbert and Judge Hawley, this court seems to have had before it the precise objection made here to the form of the decree entered. We have not a copy of the decree in that case before us, and inasmuch as the decision of the trial court does not seem to have been reported, the text of the decree is not available. It was a mortgage foreclosure, and we assume that the



assignments of error correctly indicate the character of the decree. We quote from the assignments of error on page 185:

“(9) The court erred in finding, in and by said decree, that \$5,558,000 was the total principal due on said outstanding bonds at the date of the rendition of the decree.”

“(12) The court erred in ordering, adjudging, and decreeing herein that this defendant pay or cause to be paid to the complainant, on or before the 3rd day of February, 1896, the sum of \$5,558,000, together with the interest found to be due by the terms of said decree, as hereinbefore stated.”

“(17) The court erred in ordering, adjudging, and decreeing herein that this defendant is personally liable for, and shall pay to the complainant, the amount of any deficiency, with interest thereon, which may remain due after the sale of the properties of this defendant under the terms of said mortgage, and the application of the proceeds thereof, pursuant to the terms of said decree.”

It will be observed that the decree assailed on that appeal conformed substantially to the requirements of the laws of Washington. The applicability of these laws was evidently not urged, or considered. This court disposes of these assignments of error as follows:

“The third point made on behalf of the appellant is answered by the ninety-second equity rule prescribed by the Supreme Court for the government of the courts of equity of the United States. It is as follows:

“In suits in equity for the foreclosure of mortgages in the Circuit Courts of the United States, or in any court of the territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in the eighth rule of this court regulating the equity practice, where the decree is solely for the payment of money.” *Insurance Co. v. Keith*, 23 C. C. A. 196, 77 Fed. 374.

“By the terms of the decree appealed from, the deficiency judgment provided for is not for the benefit of the complainant, but is in favor of the complainant as trustee. The amount of such deficiency, like the amount realized by the sale of the mortgaged property, after deducting costs et cetera, is to be paid to the bondholders according to their respective interests. A special prayer for a judgment for such deficiency as may be found to exist, while proper and the better practice, is not absolutely essential. Under the prayer for general relief

which the amended bill contained, such judgment may be given."

4. In concluding, our discussion on this phase of the case, we might again remark that the objection made goes to the form of the decree, and not to the jurisdiction of the court over the person, or subject-matter. If we understand aright the position of appellant, and interpret correctly the language of the single assignment of error, it is, that appellant was not a party to the cause, hence the trial court had no jurisdiction over its person. It necessarily follows that, if the appellant wishes to reserve this point, he cannot be heard to challenge mere errors, or irregularities in practice. If the appellant was a party to the case and made seasonable objection to the form of the decree entered, had an exception duly noted, and had properly assigned the action of the court as error, it might be in position to have such question reviewed. If the court had no jurisdiction of appellant, then appellant is not concerned with any errors or irregularities during the progress of the trial, or in the making up of the decree, as to its form. If the court had jurisdiction of appellant, then it is not in position to complain of the form of the decree, because it made no objection thereto in the trial court, reserved no exceptions, and has not here assigned as error any irregularities in form, or practice, or any departure from the rules prescribed by the Supreme Court.



## III.

APPELLANT'S ARGUMENT DEFEATS  
ITS RIGHT OF APPEAL—COUNSEL COM-  
PLAINS OF FORM OF DECREE.

The second contention advanced by appellant in its order in the brief filed (Point II) embraces two distinct propositions, viz.:

(a) The judgment being beyond the power of the court to enter, in the form entered, must be construed to be a mere ascertainment of the amount due from the mortgagor and as a necessary step in the foreclosure; and

(b) That a fair interpretation of the language of the bond covers the payment of a deficiency judgment only, as that is the only kind of a judgment which could be lawfully rendered.

1. The first point refers to the form of the decree and is merely another way of stating the contention advanced under Point I, which we have heretofore discussed, to the effect that no deficiency judgment could be provided for, ordered or decreed in the foreclosure suit in advance of sale. But appellant advances from the unsound premise that the decree in form was defective, and was not in compliance with the equity rules, to the satisfying conclusion that, properly construed, the de-

cree is merely in effect the ascertainment of the amount due upon the mortgage debt as a step in the foreclosure suit. (pp. 5-6, App. Brief.)

Now the decree against the appellant is no broader than that against its principal, the Mountain Timber Company. Indeed, the decree against both is but a single decree, the language applying to each alike. Counsel have demonstrated to their own satisfaction that the court had no power to enter any decree which would impose a personal liability upon either the principal or the surety; that no personal liability for a deficiency or otherwise, could be declared, provided for, or decreed until after sale of the property; that the power of the court was limited to a decree merely ascertaining the amount of the mortgage debt and directing foreclosure; that in fact properly construed, this is all that the decree means; that construed in the light of the powers of the trial court, and the rules of construction announced by the Supreme Court of the United States, the decree does not impose any personal liability upon either the mortgagor, or the appellant, but merely in effect states the amount due and directs a sale. And if all this be true, of what does appellant complain? Surely it cannot complain of or appeal from a mere ascertainment of the amount of the mortgage debt with direction that the mortgage premises be sold. Given the construction, which counsel insists is beyond doubt the true one, the decree is wholly innocuous so far as anybody and everything is concerned, except the mortgaged property. Why then the appeal? Is it merely to have this court

approve the construction insisted upon by appellant? Counsel say that their contention is fully supported by the Supreme Court of the United States. And if this be so, why go elsewhere merely to have their views confirmed. The argument proves too much. It defeats the right of appeal entirely, because if the decree entered is in effect merely an ascertainment of the amount due, it is not a final decree, and no final decree has as yet been entered. It is not sufficient for appellant to say that the trial court may permit the unauthorized issuance of an execution. It is not to be presumed that the trial court will do an unlawful act, or direct one to be done, and until there is some overt judicial act to the injury of appellant there is nothing of which complaint can be made in this court. And according to the argument of counsel, nothing as yet has been done to the prejudice of appellant. It is conceded that the decree as construed by counsel, a construction which they insist is too clearly and palpably ~~✗~~ right to be open to debate, is within the undoubted powers of the trial court, imposes no liability upon the appellant, and works no injury upon it. Counsel say that the language is so broad that the credit of appellant may be impaired. If counsel think that the inadvertent use of terms too broad in the decree may be of detriment to the appellant, the orderly and appropriate method of securing relief would have been to apply to the trial court. This court does not sit to correct mere verbal inaccuracies. Indeed, this argument in its ultimate effect upon the right of appellant to maintain its appeal is somewhat akin to the further contention that the judgment is wholly void because appellant was not a



party, hence no judgment. On the one hand it is insisted that no judgment has in fact been entered, and what the court has done has been merely to ascertain the amount due, and that no other construction of the decree is admissible. Upon this theory there never has been any judgment entered against the appellant. Upon the other hand, it is contended and indeed, both contentions are advanced indiscriminately upon the same pages, that a judgment has been entered which imposes upon appellant, not only liability for any deficiency remaining after the sale of the mortgage premises but liability for the full amount found to be due. Of course both contentions cannot be true. As a matter of fact, both are unsound.

But it may be interesting to note that, as the argument that no personal judgment has yet been entered defeats the appeal, so the argument that the judgment is wholly void upon its face because appellant was not a party to the cause would seem likewise to defeat the right of appeal. It was said by the Supreme Court of Indiana in *Backer v. Eble*, 144 Ind. 287; 43 N. E. 233.

“A judgment rendered in vacation is void. Where a judgment is void because rendered in vacation, no appeal lies therefrom.”  
And the Court concluded its opinion thus:

“Appellant’s contention having been established that no judgment has been rendered in this case, it follows that their appeal must be, and is, dismissed.”

And in *Staab v. Atl. & P. R. Co.*, 3 New Mex. 349; 9 Pac. 381, the court held that nisi prius judges had no power to sit in vacation for the purpose of rendering final judgments at law and that in the case under consideration "The proceedings in the lower court being void there is no final judgment, hence the case is still pending in that court," and the appeal was dismissed. And in *Lawther v. Agee*, 34 Mo. 372, the Court held that if a party had not availed himself of a motion in the lower court to have an alleged void judgment set aside he could not appeal. And in *Herman v. Martin*, 21 Ky. Law 1396, and *Piper v. Johnson*, 12 Minn. 60, it was held that where a party alleging a judgment to be void moved in the lower court for an order setting it aside which was denied, he might then appeal from the judgment and from the order refusing to set it aside.

Taken at their full value the arguments advanced by counsel for appellant, what is complained of are certain alleged verbal inaccuracies in the decree actually entered, never called to the attention of the court, or made the basis of any motion, request, ruling, or exception, or assignment of error here. While we do not concede the soundness of any of these contentions, they have been analyzed merely for the purpose of showing that, if the views of appellant are sound, the result has been to demonstrate beyond all dispute that the appeal should be dismissed, and to demonstrate nothing else.

2. The second contention under this head, viz., that

the language of the bond covers only the payment of a deficiency judgment, since that is the only kind of judgment which could be lawfully entered, will now be briefly discussed. This question is not of much practical importance because that is the effect of the decree as entered. The decree directed the sale of the mortgaged property and the application of the proceeds of the sale to the payment of the expenses and the mortgage debt, and provided for issuance of execution as to any deficiency remaining after the application of the proceeds of the sale. So that the character, and the extent, of the liability actually imposed upon the appellant is exactly that conceded to be within the fair interpretation of the bond.

In effect the bond bound the appellant to pay any judgment that might be rendered in the cause. The following is the language of counsel for appellant stating their interpretation of the instrument:

“That bond was an agreement to pay any judgment that might be rendered in the cause.”

(App. Brief, p. 23.)

The appellant did not contract with respect to any particular form of judgment or decree. It is not concerned with the form of the decree entered, or the propriety of the action of the court in entering it. Whatever decree was entered against its principal bound it. The liability of the principal as determined by the de-



cree entered was the liability of the appellant, and that liability became fixed upon the entry of the decree, and the character and the scope of the liability were unalterably settled by the decree. Appellant cannot be heard to say that the court committed some error during the progress of the trial, or erroneously construed the equity rules promulgated by the Supreme Court, or disregarded any of the usual methods of procedure in making up the decree. They do not concern, or affect, the liability of appellant because its contract was to pay any judgment which might be rendered in the cause.

*Oelrichs v. Williams*, 15 Wall. 211; 21 Law Ed. 43-44.

*Washington Ice Co. v. Webster*, 125 U. S. 426-446; 31 Law Ed. 799-807.

*Moses v. U. S.*, 166 U. S. 600, 41 Law Ed. 1130.

*Cyclone, etc. Plow Co. v. Vulcan Iron Works*, 52 Fed. 923, 924.

#### IV.

APPELLANT BECAME A PARTY TO SUIT UPON EXECUTING AND FILING BOND. IT CONTRACTED TO PAY ANY JUDGMENT ENTERED. SUMMARY JUDGMENT ENTERED AFTER NOTICE AUTHORIZED — NOTICE SUFFICIENT — ALLEGED DEFEATS NOT ASSIGNED AS ERROR, AND NOT JURISDICTIONAL.

We come now to the question of the jurisdiction of the court over the person of appellant. Briefly summarized, our contention is: that by the act of signing the bond, filed in the progress of the cause, the appellant thereby made itself a party to the record, assumed a liability co-extensive with that of the principal; and that, having ascertained the character and extent of the liability of the principal, the court summarily, and upon notice to the surety, was authorized to render against it the same decree rendered against the principal. The circumstances surrounding the execution of the bond, the state of the cause when the bond was executed, and the subsequent proceedings in the cause leading up to the entry of the decree appealed from, including the allegations in the complaint, and supplemental complaint, and those portions of the findings, conclusions and decree of the court pertinent to the liability of the appellant, all appear in the printed transcript, and are referred to somewhat at length in the statement of facts contained in this brief.

1. The proceedings in the cause resulted in findings and a decree fixing the liability of the mortgagor. Indeed, that was the primary purpose of the suit, because, until the liability of the mortgagor was established, the mortgaged property could not be appropriated to pay the debt, or a deficiency judgment awarded. The contract of appellant was to pay any judgment that might be rendered in the cause. This is the construction placed upon it by counsel for appellant in their brief on page 23, where it is said:

“That bond was an agreement to pay any judgment that might be rendered in the cause.”

Thus the liability assumed by the defendant was co-extensive with that which might be imposed upon the mortgagor by the decree entered in the cause. As the purpose of the suit was to ascertain the liability of the principal and to prescribe the manner of its enforcement, the decree necessarily operated to determine and fix such liability for all purposes, both as against the mortgagor and the appellant. No further proceedings were necessary, or authorized, to determine the extent of the liability of appellant. The decree was entered after notice to appellant that the entry of such decree would be moved at the time and place fixed in the notice.

2. In many states the character of statutory bonds, and the manner of enforcing the liability of the surety, are fixed by statute. Decisions from such jurisdictions are valueless as precedents, either upon the one side or the other in this case, for two reasons: first, there is here no applicable statute; and, second, the instrument here involved is not a statutory bond. There are many adjudicated cases which, we think, fully sustain the practice followed in the present case, and clearly establish the validity of the judgment appealed from. And, without further discussion, we will now refer to, and discuss, some of these decisions.

In some of the very early federal decisions it was



doubted whether, in the absence of express statutory authority, judgment could be summarily entered against a surety in the same cause in which the bond was given, the view being then entertained that the remedy was by an independent action at law. These early decisions were, however, in effect disapproved by the Supreme Court of the United States in *Russell v. Farley*, 105 U. S. 433; 23 Law Ed. 1060. And since that time the federal courts have quite uniformly asserted and exercised the power of entering judgment summarily in the principal case, against the surety.

In *Brown v. Northwestern Mutual Life Ins. Co.*, 119 Fed. 149, the Court of Appeals had before it an appeal by a surety from a summary judgment rendered in a foreclosure suit against the surety on a supersedeas bond, given on appeal from an order confirming sale under a decree of foreclosure. The judgment was sustained by that court, and was affirmed upon appeal to the Supreme Court, under the title of, "*Woolworth v. Northwestern Mutual Life Ins. Co.*, 185 U. S. 354; 46 Law Ed. 945."

*Tyler Mines Co. v. Last Chance Mining Co.*, 90 Fed. 15, is a decision by this court. It was a suit in equity to restrain the defendant from working certain mines, and for an accounting. Plaintiffs, at the time of filing of the bill, obtained a temporary injunction, and executed the usual bond. Thereafter a decree was rendered for defendants, upon reference the damages were

ascertained, and summary judgment was ordered and entered against the plaintiff and the sureties upon the bond. In an opinion rendered by Judge Ross, concurred in by Judges Gilbert and Hawley, this practice was approved, and the judgment sustained. The court, among other things, saying:

“On behalf of the sureties on the bond, it was contended that no decree could be rendered against them because they were not parties to the suit; in support of which position *Bein v. Heath*, 12 How. 168, is cited and relied on, in which case Chief Justice Taney made this remark:

“A court proceeding according to the rules of equity cannot give a judgment against the obligors in an injunction bond when it dissolves the injunction. It merely orders the dissolution, leaving the obligee to proceed at law against the sureties, if he sustains damage from the delay occasioned by the injunction.”

“In the case of *Russell v. Farley*, 105 U. S. 433, 445, the court reviewed the case of *Bein v. Heath*, as well as the decision of Mr. Justice Curtis in *Merryfield v. Jones*, 2 Curt. 306, Fed. Cas. No. 9, 486, and said:

“Upon a careful examination, we are not satisfied that they furnish any good authority for

disaffirming the power of the court having possession of the case, in the absence of any statute to the contrary, to have the damages assessed under its own direction. This is the ordinary course in the court of chancery in England, by whose practice the courts of the United States are governed, and seems to be in accordance with sound principle. The imposition of terms and conditions upon the parties before the court is an incident to its jurisdiction over the case; and, having possession of the principal case, it is fitting that it should have power to dispose of the incidents arising therein, and thus do complete justice, and put an end to further litigation. We are inclined to think that the court has this power, and that it is an inherent power, which does not depend on any provision in the bond that the party shall abide by such order as the court may make as to damages (which is the usual formula in England), nor on the existence of an express law or rule of the court (as adopted in some of the states) that the damages may be ascertained, by reference or otherwise, as the court may direct; this being a mere appendage to the principal provision requiring a bond to be taken, and not conferring the power to take one, or to deal with it after it has been taken. But, while the court may have (we do not now undertake to decide that it has) the power to assess the damages, yet, if it has that power, it is in its discretion to exercise it or to leave the parties to an action at law. No



doubt, in many cases, the latter course would be the more suitable and convenient one."

"Since the intimation in *Russell v. Farley* it has been acted on by the federal courts in at least three cases. *Lea v. Deakin*, 13 Fed. 514; *Coosaw Min. Co. v. Farmers' Min. Co.* 51 Fed. 107; *Lehman v. McQuown*, 31 Fed. 138. See also 2 Beach, Mod. Eq. Prac. Sec. 770. Whether or not the bondsmen are entitled to notice is a question not raised by the assignments of error."

In the case just quoted from, it seems that no notice was given to the sureties of the proceedings before the Master to ascertain the amount of damages, or that judgment would be entered against them. Concerning this phase of the case the court said:

"Whether or not the bondsmen are entitled to notice is a question not raised by the assignments of error."

In the case at bar notice was given. In their brief counsel question the sufficiency of such notice. Whether or not notice was necessary, or whether the notice given was defective, are questions not raised by the assignments of error.

In *Gordon v. Third Nat. Bank*, 56 Fed. 790, the Circuit Court of Appeals for the Fifth Circuit, had be-

fore it a summary judgment entered against the sureties on a supersedeas bond. No federal statute, or rule, dealt with this matter. Judgment was entered after notice to the sureties. It was contended that the sureties were not parties to the suit, and that the only remedy upon the bond was an independent action at law. This contention was denied by the Circuit Court of Appeals, as well as by the subordinate federal court. And it was in substance held, that the bond was, in effect, a contract imposing upon the sureties a liability as broad as that of the principal; that the entry of judgment against the principal, from its very nature, fixed the extent of the liability of the surety; that no reference, or other inquiry, was necessary to determine the liability of the sureties, and that it was proper, upon notice, to enter judgment upon the bond in the cause in which it was given.

In *Empire State etc., Company v. Hanley*, 136 Fed. 99-103, this court, in a decision rendered by Judge Gilbert, and concurred in by Judge Ross and Morrow, approved the practice adopted, and the doctrine announced in the *Gordon* case, *supra*; and quoted with approval the following language of Mr. Justice Miller in *Blossom v. Railroad Co.*, 1 Wall. 655; 17 Law Ed. 673:

“Sureties signing appeal bonds, stay bonds, delivery bonds, and receptors under writs of attachment, become quasi parties to the proceedings, and subject themselves to the jurisdiction of the court, so that summary judgments may be rendered on their bonds or recognizances.”

In *Perry v. Tacoma Mill Co.*, 152 Fed. 115, a decision by this court, it was contended that summary judgment entered against the sureties upon the bond given in the cause, in the course of litigation, was unauthorized. The suit was brought to foreclose a mortgage executed to Tacoma Mill Company, plaintiff in the court below, and appellee in this court. The following is a statement of certain of the facts taken from the decision of this court:

“A final decree of foreclosure was entered therein October 3rd, 1904, in and by which judgment in the aggregate amount of \$19,865.57 was given against George Lawler, and George Lawler doing business as the Sunset Lumber Company, and foreclosing the mortgage, which was thereby adjudged to cover:” (Here follows a description of the property)

In passing, it may be here remarked that the form of the decree entered was similar to the form of the decree entered in the case at bar. The property covered by the mortgage consisted of a small sawmill plant, including engines, boilers, saws, tools, tram-ways, portable houses for workmen, portable cook houses, certain livestock, etc., mostly personal property. One, Perry, intervened in the case, and set us as a defense that he was the owner of a large part of the property, adjudged to be covered by the mortgage, and that the mortgagors had no authority to encumber it. After the decree was entered the prop-



erty was seized and held for sale by an officer of the court, charged with the duty of making the sale. Perry took an appeal. No application was made by Perry to the court for a release of the property; but he undertook to stay the decree, and to cause a return of the property to him, by a bond conditioned that he, Perry, would hold the property "subject to the proper order and decree that may be finally entered in said cause," etc. The decree was affirmed on appeal. The amount of the bond was \$12,000.00, somewhat less than the amount of the decree. While the appeal was pending the property was destroyed by fire. It will be noted that the bond was not a statutory bond, but, like the one in case at bar, was given during the progress of the litigation for the purpose of securing to the obligor some advantage and benefit. Upon the coming down of the mandate, the Tacoma Mill Company, plaintiff in the foreclosure suit, moved for summary judgment against the sureties upon the bond for the amount of the penalty of the bond, to-wit: \$12,000.00. Such a judgment was entered, and upon appeal therefrom by the sureties, was affirmed by this court.

Cimiotti Unhairing Co. v. American Fur Refining Co., 158 Fed. 171-174, is interesting and in point. It was a suit for an injunction to restrain an alleged infringement. A temporary injunction was ordered upon condition that the complainants give bond in the sum of \$15,000.00, which bond was filed and approved. On final hearing the Circuit Court adjudged an infringement, and granted a permanent injunction. The Court

of Appeals reversed the decree, and its decision was affirmed by the Supreme Court. The mandate coming down, the Circuit Court made an order directing the Master to take proofs and ascertain and report to the court what damages the defendants had suffered. The surety upon the injunction bond was not given notice of any of these proceedings, and, so far as the record discloses, took no part therein. The Master found and reported damages in the sum of \$18,406.70; the court modified this amount somewhat, but affirmed the report in an amount exceeding the penalty of the bond. The defendants then moved for judgment against the complainants for the amount of the damages, and for judgment against the surety for the amount of the bond, to-wit: \$15,000.00. This, the court allowed, citing as authority, *Tyler Mining Co. v. Last Chance Mining Co.* *supra*; *Empire State, etc. Co. v. Hanley*, *supra*, two decisions by this court, and *Russell v. Farley*, *supra*, a decision by the Supreme Court. Other Federal decisions supporting the same view are:

*McCloskey v. Barr*, 79 Fed. 408.

*Coosaw Min. Co. v. Farmers' Min. Co.*, 51 Fed. 107.

*Third Nat. Bank v. Gordon*, 53 Fed. 471.

3. The same rule of practice has been repeatedly approved and followed by state courts in the absence of express statutory provisions regulating the mode of enforcing liability of sureties upon bonds given in the course of judicial proceedings.

Sharp v. Schmidt & Zeigler, 62 Tex. 263, was a suit for injunction. Temporary injunction issued and bond was given. The defendants filed an answer denying the equities of the bill, and pleaded by way of reconvention, damages resulting from the issuance of the injunction. The answer and counter-claim was not served upon, or brought to the notice of the sureties upon the injunction bond. The plaintiff failed to sustain the appeal, and judgment was given against him in favor of the defendants; and likewise judgment was entered summarily against the sureties upon the bond. The action of the court was not predicated upon any statute or rule, so far as disclosed by the opinion of the Supreme Court. Contending that judgment could not be entered against them in this way, and that their liability must be established in an independent action upon the bond, the sureties appealed. The judgment was sustained, the court among other things saying:

“The sureties upon the injunction bond were practically parties to the suit, and liable to have any judgment rendered against them which was authorized by the pleadings and proofs, at least to the extent of their bond.”

Corbett v. Pond, 10 App. D. C. 17-28, was a replevin action. A bond was filed. There was no statute regulating the manner of enforcing the liability of the sureties on the bond. A money judgment was given against the principal in the bond, and likewise



against the surety, and in sustaining this judgment the court said:

“The purpose of this undertaking was, like that of a recognizance, to introduce a new party into the proceedings, who should become bound by the judgment, if judgment should be against the plaintiff, and liable for its performance.”

And the following cases directly, or by analogy, all sustain the view that, in the case at bar, the court was authorized upon summary application, to enter judgment against the appellant:

Hathaway v. Weeks, 34 Mich. 237-244.

Council v. Averett, 90 N. C. 168.

Smith v. Wilson, 18 Tex. Civ. App. 24; 44 S. W. 556.

Black v. Caruthers, 4 Humph. (25 Tenn.) 87.

Wanters v. VanHorst, 28 N. J. Eq. 104 (1 Stew).

Easton v. N. Y. etc., Ry. Co., 30 N. J. Eq. 238 (3 Stew).

Fears v. Riley, 147 Mo. 453-456.

4. Under Point III, counsel for appellant cite a number of cases to their contention that in the present case, an independent action was necessary to enforce the

liability of the surety; or, at least ancillary proceedings were necessary to that end. We think that a brief examination of these cases will show that none of them in point in support of this view, and that two or three of them announce, *arguendo*, approval of the practice followed in the case at bar. These cases will now be discussed:

*Beall v. New Mexico*, 16 Wall. 535; 21 Law Ed. 292, involved the constitutionality of a territorial act authorizing judgment against sureties on an appeal bond, as well as against the appellants, in case of affirmance. The act was sustained. Some things the court said in its opinion are instructive. Said the court:

“A party who enters his name as surety on an appeal bond, does it with full knowledge of the responsibility incurred. In view of the law relating to the subject, it is equivalent to a consent that judgment shall be entered up against him if the appellant fails to sustain his appeal. If judgment may be thus entered on a recognizance, and against stipulators in admiralty, we see no reason in the nature of things, or in the provisions of the constitution, why this effect should not be given to appeal bonds in other actions, if the legislature deems it expedient. No fundamental constitutional principle is involved; no fact is to be ascertained for the purpose of rendering the sureties liable, which is not apparent in the record itself; no object (except mere delay) can be subserved by compelling

the appellees to bring a separate action on the appeal bond.”

*Babbitt v. Shields*, 101 U. S., 25 Law Ed. 820, was an action upon an appeal bond. The propriety of the practice adopted in the instant case was not involved directly or collaterally, and no mention is made of such matter in the course of the opinion. The court did, however, say that the entry of judgment against the principal definitely fixed the liability of the sureties; that that judgment was conclusive upon the sureties; that it was not necessary to issue execution against the principal, or take any further step or proceeding whatsoever, because the entry of judgment charged the sureties with a liability as broad as the liability of the principal. And so it is in the present case, the entry of judgment against the principal fixed beyond dispute, the liability of the appellant. No further inquiry was necessary. Its contract was to pay any judgment that might be rendered in the cause; and, as said by the Supreme Court in *Beall v. New Mexico*, *supra*,

“No fact is to be ascertained for the purpose of rendering the sureties liable, which is not apparent in the record itself; no object (except mere delay) can be subserved by compelling the appellees to bring a separate action on the appeal bond.”

*Smith v. Gaines*, 93 U. S. 341; 23 Law Ed. 901, involved the application of the provisions of the Code of



Louisiana to the liability of sureties upon an appeal bond. These statutory provisions authorized summary judgment against sureties upon a supersedeas bond. No question was involved or discussed pertinent to the case at Bar.

Crocker v. Currier, 65 Wis. 667, does not deal with the question of judicial bonds, or the liability of sureties, in any manner whatever. The only question considered by the Wisconsin court, which might have any bearing upon any matter discussed in the brief of counsel for appellant, was the proper construction, under the statutes of that state, of a decree for the foreclosure of a lien.

Earl v. Cureton, 13 S. C. 19 (cited in counsel's brief as 14 C. S. 19), reversed a summary judgment entered against a surety. The opinion is very brief, and recites that no notice was given the surety that judgment would be asked, and no motion made and brought to the attention of the surety. Without discussion, or citation of authorities, the court held that the judgment was erroneous, and set it aside.

Leslie v. Brown, 32 C. C. A. 556; 90 Fed. 171, is a decision by the Circuit Court of Appeals, for the Sixth Circuit. It was an independent action at law upon a bond given in an injunction suit. A demurrer to the complaint was sustained by the lower court; and, it seems, among other things, to have been contended that no action at law could be brought, and that the remedy was

by summary proceedings in an injunction suit for judgment against the sureties. The Court of Appeals sustained the right to sue at law, and among other things said:

“It is settled by the cases of *Russell v. Farley*, 105, U. S. 433, and *Meyers v. Block*, 120 U. S. 207, 7 Sup. Ct. 525, that the court which grants an injunction, and takes an injunction bond, to save the defendant from loss caused thereby, may, in an ancillary proceeding, summarily enforce this bond against the sureties; but in such a proceeding, at least when the amount of recovery is uncertain, the sureties must have notice and their day in court before the amount of damage is fixed against them. The amount of recovery under this bond was not certain.”

It may be here observed, that *Tyler Min. Co. v. Last Chance Min. Co.*, decided by this court, in which summary judgment against sureties was sustained, the damages being certain, and in which the court said: “Whether or not the bondsmen are entitled to notice is a question not raised by the assignments of error,” was decided about the same time, and is reported in the same volume.

*Terry v. Robinson*, 122 Fed. 725, was an injunction suit, in which a temporary injunction was issued and bond filed. The bond was in the sum of \$500.00. The

injunction was dissolved, and a reference was made to ascertain the damage, which was found by a special Master to be \$2670.57. There were exceptional circumstances in the case. On the theory that the injunction was maliciously sued out, and that in such case the sureties were liable for the full damage, even though it exceeded the penalty of the bond, application was made for the entry of judgment against the surety for the full amount of the bond. No notice was given to the sureties. In the course of the opinion the court said, that the sureties had no notice, and judgment could not be entered against them. The court also set aside the entire award of damages made by the Master, and taxed all costs of reference against the defendants in the injunction suit. Nothing in the case, in view of the facts, is in point here.

These are all of the cases cited by appellant under Point III, in support of its claim that the judgment entered against the appellant is wholly void, because it was not a party to the cause. In the course of the argument, there is referred to, and quoted from a decision by the Supreme Court of Oregon—*Holbrook v. Investment Co.*, 32 Ore. 104-106. Let us now examine this case and see whether or not it supports the views of appellant. Holbrook and another obtained a judgment against the Investment Company in the Circuit Court of Multnomah County. The defendant appealed, giving a supersedeas bond. Pursuant to the provisions of the Oregon Code, and within ten days after the appeal was perfected, Holbrook et al. filed an undertaking conditioned that



if the judgment should be reversed, or modified, they and their sureties would make such restitution as the appellate court might direct, and thereupon obtained execution upon the judgment, notwithstanding the appeal, and about half of the judgment was collected. The Supreme Court reversed the judgment and entered an order against the principals and the sureties upon their restitution undertaking, to restore to the defendant the money so collected. The sureties made application to the Supreme Court to be relieved from such order, and to have it set aside, on the ground, mainly, that a summary order or judgment of that kind could not be entered against them. There was no statute authorizing such an order or judgment, to be entered by the Supreme Court. There was a statute authorizing the entry of judgment against the principal and the sureties on a bond to stay the enforcement of an ordinary law judgment pending an appeal, but this was not that kind of a bond. The only statutory provisions relating to a bond such as was before the Supreme Court, were as follows:

“If the judgment or decree has been given in an action or suit upon contract, notwithstanding an appeal and undertaking for the stay of proceedings, the respondent may proceed to enforce such judgment or decree, if, within ten days from the time the appeal is perfected, he file with the Clerk an undertaking, with one or more sureties, to the effect that if the judgment or decree be reversed or modi-

fied, the respondent will make such restitution as the appellate court may direct."

Nothing in these provisions directly authorized the entry of summary judgment against the sureties. The obligation was to make such restitution as the court might direct. The obligation of the appellant in the case at bar was to pay any judgment that might be rendered in the cause. Discussing these statutory provisions and the general policy of the law, the Oregon Supreme Court said:

"It will be observed that this section does not, in direct terms, confer upon this court authority to render judgment against the sureties on such an undertaking, when the judgment or decree is reversed or modified, but we think the power is fairly implied therefrom, and particularly so when the general policy of the law, as manifested by sections 541 and 546 is considered. The appellant is required to include in the transcript a certificate of the undertaking executed by the respondent, the names of the sureties, and the amount thereof, if the same is specified (section 541, subdivision 1, Hill's Ann. Laws) ; and it would seem from this provision that the sureties, by signing such an undertaking, became parties to the judgment or decree upon the reversal or modification of which they agree to make such restitution as may be directed, thereby authorizing this court to render judgment against

them in accordance with the conditions stated in such certificate. \* \* \* It amounts to this: If the judgment is affirmed, the respondent is entitled to have the judgment entered against the sureties on the appeal; if it is reversed, the appellant is entitled, if it has been enforced, to have a judgment of restitution entered against the sureties upon the counter-undertaking; and in case it has been enforced, and the judgment is affirmed, the prevailing party would only be entitled to judgment for the costs upon appeal."

It is clear there was no statute authorizing such a judgment, but the liability of the sureties was fixed by the decision of the Supreme Court, fixing the amount to be restored by the principal in the bond. By signing the bond, and not by force of any direct statutory provisions, the sureties became parties to the cause. The character of the liability assumed by the sureties, and the general policy of the law, were held to authorize the court to enter judgment as of course, and without notice, against the sureties for the amount of the liability of the principal. So in the case at bar, appellant by its contract, fixed its liability, which was, in the language of its counsel, "a contract to pay any judgment that might be rendered in the cause." When it signed the bond it made itself a party to the suit, the very purpose of which was to fix the liability of the defendant and crystallize that liability into the very judgment appellant agreed to pay.



5. Some complaint is made that the notice given to appellant, of the time and place when judgment against it would be applied for, was inadequate. There is no pretense that appellant did not have notice and opportunity to be heard. There is no suggestion that appellant wished to be heard upon the application for judgment. The trial court acquired jurisdiction over appellant when it executed and filed its bond in the cause. We, of course, contend that the notice given was ample in form and gave a sufficient time to appellant to appear and object, if it wished to object, to the entry of judgment against it. But if the notice was defective in form, or if it should have given the appellant longer time within which to prepare for the hearing, those are matters not going to the jurisdiction of the trial court. The proper place to move was in the trial court, either to set aside the service of notice, or for the dismissal of the motion for the entry of judgment against it, or for more time within which to appear, move, object or take any other step it deemed expedient. And if in connection with any of such proceedings appellant deemed itself aggrieved by any action, or ruling, of the court, and wished to have such ruling or action reviewed, it should have duly excepted to and made such alleged prejudicial ruling or action, the basis of appropriate assignment of error here. The objection to the form of the notice is highly technical, and like most of the other questions argued in appellant's brief evidently was not thought of when the appeal was taken and the assignment of errors prepared and filed

Finally, this objection may be disposed of with the following quotation from the opinion of this court applicable to the facts before the court then, and peculiarly apt here, viz.:

“Whether or not the bondsmen are entitled to notice is a question not raised by the assignments of error.”

Tyler Mines Co. v. Last Chance Mines Co.,  
supra.

It is respectfully submitted that the decree appealed from should be affirmed.

M. J. GORDON, A. E. CLARK,  
M. H. CLARK, I. E. SHRAUZER,  
Attorneys for Appellees, Burke and Ferris.

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NO. 2744

**United States  
Circuit Court of Appeals  
For the Ninth Circuit**

UNITED STATES FIDELITY & GUARANTY  
COMPANY, a Corporation,

Appellant,

v.

GEORGE B. BURKE, and E. W. FERRIS, as Ad-  
ministrator of the Estate of David L. Kelly,  
deceased, and MOUNTAIN TIMBER COM-  
PANY, a Corporation,

Appellees.

**PETITION FOR REHEARING.**

Upon Appeal from the United States District Court  
for the Western District of Washington,  
Southern Division.

BEACH, SIMON & NELSON,  
Attorneys for Appellant,

ALFRED E. CLARK,  
M. J. GORDON,  
I. E. SHRAUGER,  
M. H. CLARK,

Attorneys for Appellees.

**Filed**

FEB 28 1917

F. D. Monckton,  
Clerk.



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PETITION FOR REHEARING.

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Comes now the appellant and petitions the Court for a rehearing of the above entitled matter, and as grounds therefor respectfully presents the following for the consideration of the Court:

1. The industry of counsel and of the Court has failed to discover a single direct precedent in English or American jurisprudence for the conclusion reached by the Court.

2. The conclusion reached by the Court affirms judgment on a bond before the breach of any of its conditions.



3. The conclusion reached by the Court affirms a judgment against one not a party to the cause on an extraneous instrument not entered into pursuant to any order or rule of court or State or Federal law.

4. The conclusion reached by the Court treats as a personal judgment a decree which under the decisions of the United States Supreme Court and under the Federal equity rules cannot have any greater force than a mere ascertainment of the amount of indebtedness prior to the sale of the mortgaged property.

We append a brief exposition of these points.

## I.

### DECISION WITHOUT PRECEDENT.

The fact that a decision is without precedent is, of course, not in any sense an indication that it is erroneous. It should, however, serve to give pause—to invoke a more than ordinarily careful examination of its basis, scope and results and in view of the well known danger of argument from analogy, a careful inspection of the supposed authorities for the position taken.

The opinion of the Court states the facts of the case accurately and fairly to the appellant; we earnestly urge the Court to consider before stamping its opinion with finality whether its reasoning and citations of authority have any just relation to these facts.

Here is a **suit to foreclose a mortgage**; an application for an injunction to restrain the cutting of timber pend-

ing suit; a private arrangement between the parties whereby the application for injunction is not to be pressed in consideration of the furnishing of a bond for the protection of the plaintiff; a decree ascertaining the amount of indebtedness before foreclosure sale and simultaneously therewith awarding judgment against the surety on the bond referred to.

Manifestly, the situation of such a surety is entirely different from a surety on a bond furnished by a plaintiff pursuant to **order** of court as a **condition** of injunctive relief. A decision in favor of the defendant in such a suit is a finding that plaintiff was not entitled to the injunctive relief, and a phase of that decision is the ascertainment of the damage to secure payment of which the Court required the execution of the bond. It was freely conceded by us that the authorities recognize the correctness of such a proceeding, but it can hardly be said to constitute a **precedent** for a case the theory and facts of which are totally different.

The observations contained in the last paragraph apply particularly to the following decisions cited and quoted at length in the opinion of this Court, **each** of which involved a plaintiff's bond required by the Court as a condition of injunctive relief:

**Russell v. Farley, 105 U. S. 433.**

**Tyler Mining Co. v. Last Chance Mining Co., 90 Fed. 15.**

**Baker & Bennett Co. v. Cass Co., et al, 224 Fed. 439.**

**Cimiotti Unhairing Co., et al v. American Fur Refining Co., et al, 158 Fed. 171.**

Again we believe that the Court, upon reconsideration, will not deem that a just analogy inheres in the conceded right to enter judgment against the surety on a **supersedeas** bond. That is what was done in the remaining two cases cited in the opinion as authority for sustaining the action of the lower court:

Empire State-Idaho Mining & Developing Co.,  
et al v. Hanley, 136 Fed. 99,

Perry, et al v. Tacoma Mill Co., 152 Fed. 115.

The foregoing are **all** of the cases cited by the Court as authorities for the principle that the lower court had jurisdiction of appellant. We respectfully submit that **none** of them constitutes a precedent or even furnishes an analogous illustration.

## II.

### JUDGMENT ON BOND IN ADVANCE OF BREACH.

The bond provided that

“if Mountain Timber Company (the mortgagor) shall pay, or cause to be paid, in full, any judgment which shall be rendered in favor of the plaintiff in the above entitled action”

the bond should be void, otherwise in full force.

How could the Court without doing violence to the accepted meaning of the simple words used, find that the condition of, or a breach of this obligation had occurred until there was a **failure to pay** the judgment?



Even if it be conceded for the present that the decree in advance of sale, ascertaining the indebtedness, amounted to a judgment in the sense mentioned in the bond, yet there would be no violation of its terms until a failure to pay the amount thus decreed, occurred.

We assume that judgment could hardly have been rendered against the surety **before** the decree. Is there any stronger logical basis for rendering it **simultaneously** with the decree?

### III.

#### JUDGMENT ON EXTRANEIOUS INSTRUMENT AGAINST ONE NOT A PARTY.

This matter has been adverted to under I *supra*. We confess that our idea as to the power of courts over litigants and particularly over persons **who** are **not** litigants has been considerably shaken, but it would seem to be an axiom so deeply rooted that it refuses to be torn from its juridical moorings, that ordinarily courts do not give judgments against persons **not** parties to the cause. A distinct exception has been created by statutes and rules of court as to sureties on attachment, re-delivery and supersedeas bonds, and bonds exacted by order of court as a condition of injunctive relief. We invite the Court's attention, however, to the fact apparently overlooked that this bond was **not** executed pursuant to any order of court. The only recorded connection of the District Court with the bond appears in the Findings of Fact and Decree.

If A sues B and threatens to attach B's property, but **desists** therefrom because of a bond tendered him by C as surety to pay any judgment which may be rendered, and that bond is accepted without any order of court and purely by **private agreement between the parties**, can a court, even under statutes of a State permitting judgment against sureties on bonds to discharge attachments, enter judgment against C, or is A relegated to a common law action for breach of the bond? We are unable to perceive any difference in principle between this supposed case and the one at bar.

#### IV.

### DECREE NISI TREATED AS PERSONAL JUDGMENT.

We shall not repeat the argument of our brief (Appellant's brief, pp. 6-10 inclusive), on this subject. We re-affirm our statement on the basis of the decisions of the United States Supreme Court there cited, and the **RULES OF PRACTICE FOR THE COURTS OF EQUITY OF THE UNITED STATES**, that there can be no judgment for the amount of mortgage indebtedness or any portion thereof, in advance of sale, and that the power of the court is limited to the ascertainment of the indebtedness and an order to sell. A deficiency judgment may by virtue of the authority conferred by the rules, be entered for any **balance** that may be found due **after the sale**.

Now, the Court in its opinion cites the case of **CHICAGO & VINCENNES R. R. v. FOSDICK**, 106 U. S. 47, as authority for the statement that a



decree finding a mortgage valid for the amount of the debt, ordering a sale of the premises, etc., is final and complete and may be appealed from. This may freely be granted without in the remotest degree affecting our contention. The Supreme Court points out that such a decree is in the nature of a Decree *nisi*, ascertaining the amount due and providing for sale, unless the amount be paid within a time fixed. This precisely accords with our contention. If the Supreme Court is right the District Court in the case at bar was wrong. A decree finding the amount due and ordering the sale of the property is unquestionably a final decree, because it disposes of the property, but the fact remains that such a decree is not a money judgment and that the District Court at such a stage of the proceedings is without authority to enter a money judgment against the mortgagor in a foreclosure suit. Indeed the Supreme Court, in the case cited, immediately after denominating the decree appealable, points out how it differs from a money judgment.

The condition of the bond was not that the surety would pay the amount found to be due in the event a foreclosure was decreed, but that if the mortgagor failed to pay the judgment, then the surety would be liable. Manifestly this refers to a money judgment since there is no way of paying any other kind of judgment. It could not "pay" a decree ordering the sale of property.

At page seven of its typewritten opinion, the Court says in this connection:

"the bond bound the appellant to pay any judgment that might be rendered against Mountain Timber Company in the cause, and when the Court



made a decree against the property, the liability of the appellant was fixed.”

This, we respectfully remind the Court, is not a correct statement of the terms of the bond which was to be in force in the event of the **failure** by the Mountain Timber Company to **pay** such judgment.

The liability of the Surety Company pre-supposed

- (a) **Judgment** against the Mountain Timber Company, mortgagor.
- (b) **Failure** on the part of Mountain Timber Company to pay such judgment.

**Neither** of these conditions precedent had occurred. On what theory then could the decree ascertaining the amount due, enter judgment for breach of the bond?

The observation is also made by the Court in this connection that “the form of the decree was not objected to in the District Court.” Whatever its pertinence as to a party to the cause, it is hardly applicable to a non-participant. The Surety Company had not even any notice—in any just sense—of an intention to enter such a judgment, all of which, however, is beside the mark, for the palpable reason that a judgment which the record shows to be **without basis** cannot derive validity because of the failure of one of the parties mentioned to appear in the District Court and there object to its **form**. It was a nullity and the Surety had the right to treat it as such, and to ask at the hands of the Appellate Court a reversal and cancellation thereof.

The mention of “Notice” leads to the inquiry whether

in a case pending in the United States District Court at Tacoma, a notice given to a Clerk employed in the office of a statutory agent of a party at Tallahassee, Florida, would be regarded as anything more than a sorry jest. Of course, Tallahassee is farther from Tacoma than Portland, Oregon, but just what additional sanctity would follow handing such a paper to a similar individual in the State of Oregon is not apparent.

The Court reserves opinion upon the point as to whether judgment could have been given without notice, and observes that the point of lack of notice is not raised in the Assignment of Error. We respectfully ask the Court again to consider whether such a disposition can justly be made of this point. The Assignment of Error urged lack of jurisdiction over the Surety Company, and if notice is necessary to jurisdiction to enter judgment, then the point was comprehended in the Assignment, unless the Assignment is to partake of the functions of a brief setting forth subdivisions and argumentation. The appeal was based on the single, narrow point that **on the face of the record the lack of jurisdiction was apparent**. Our understanding of jurisdiction is that it covers parties and subject matter.

\* \* \* \* \*

The learned judge who wrote the opinion pointed out in the concluding paragraph thereof that by the terms of the Court's decree the Surety Company as a matter of fact would not be called upon to pay anything except a deficiency after sale. This is quite true, unless the District Court sees fit to change its order

withholding execution. If it had the right to enter the judgment against the Surety, it can control process in the way of execution and the same power which withholds execution can award it.

We do not understand that this Court intended to indicate that it would affirm a judgment entered without jurisdiction because in the end, at some future time, a similar result can be reached in a valid proceeding. The Court is aware of the fact that a litigant is often influenced by matters as to which the record is silent, and that consideration, aside from the advantages to accrue from the **orderly** administration of justice should prevent any importance being attached to the fact, if it be a fact, that **eventually** the Surety will incur the obligation thus **prematurely** assessed against it.

We trust the Court will not take offense at our suggestion that even a surety company may subscribe to the doctrine that:

*"Sufficient unto the day is the evil thereof."*

Respectfully submitted,

BEACH, SIMON & NELSON,

Attorneys for Appellant.

State of Oregon,	)	
	) ss.	
County of Multnomah.	)	

I, Roscoe C. Nelson, one of the attorneys for the appellant herein, do certify that the forgoing petition for rehearing is not being interposed for any purpose of delay; and I further certify that in my judgment the considerations urged are well founded.



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

GREAT NORTHERN RAILWAY COMPANY, a  
Corporation,

Plaintiff in Error,

vs.

LESLIE WILLARD, a Minor, by JOSEPH J.  
LAVIN, His Guardian Ad Litem,  
Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court of the  
Eastern District of Washington, Northern Division.

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Filed

MAR 20 1916

F. D. Monckton,  
Clerk

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No. 2753

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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GREAT NORTHERN RAILWAY COMPANY, a  
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Eastern District of Washington, Northern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States for the  
....Eastern District of Washington, Northern Divi-  
sion.*

No. 2344

LESLIE WILLARD, a minor, by his Guardian *ad*  
*Litem*, R. B. WILLARD,

Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY, a  
Corporation,

Defendant.

### **Complaint.**

Plaintiff complains and alleges :

#### I.

That Leslie Willard is a minor of the age of 10 years, and that R. B. Willard, has heretofore, by order of the Superior Court of Spokane County, State of Washington, been appointed guardian *ad litem* of the person and interest of said minor, with authority to institute, prosecute and maintain this action as such. That the plaintiff is a citizen, resident and inhabitant of the State of Washington.

#### II.

That defendant is a corporation organized and existing under and by virtue of the laws of the State of Minnesota, owning and operating a line of railway extending from Spokane, northerly through the town of Springdale, Stevens County, Washington, at which latter place it owns and maintains tracks, depot and right of way, and said grounds, tracks and right of



way intersects, crosses and is contiguous to a public street, avenue and thoroughfare, of said city of Springdale.

### III.

That for some months prior to the happening of the accident hereinafter referred to, defendant, for use in and upon its line of railway, piled and stored, upon its right of way, and within [3\*] two feet of the line of said public street hereinbefore referred to, a large number of wooden railway ties, said ties weighing upwards of 300 pounds each, and being piled in about ten rows of eight ties high in each row, or the entire pile consisting of about eighty ties, and when so piled, there was on top thereof a level and clear surface upon such structure so constructed.

### IV.

That said ties were piled in a populous part of the town of Springdale, upon unenclosed premises owned by the defendant, abutting upon, and adjacent and contiguous to a public street, were unprotected and unbraced to keep the same from falling, and for a number of months prior to the date of the happening of the accident hereinafter referred to, said pile of ties and said structure was enticing, alluring and attractive to children of tender years, both boys and girls, and said pile of ties was of such character as to be attractive to children, and of such character as to appeal to childish curiosity and instincts, and for a number of months prior to the date hereinafter referred to, a large number of children attracted

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\*Page-number appearing at foot of page of original certified Record.

thereby, played in, upon and about the premises of defendant, upon and about said structure and said pile of ties, all of which was known by defendant, or in the exercise of ordinary care should have been known by defendant.

## V.

That on or about the 23d day of February, 1914, Leslie Willard, being at said time of the age of 9 years, and not knowing or appreciating the dangerous condition of the premises of defendant, went upon said pile of ties, and had no sooner reached the top thereof when a large number of ties fell from said pile, throwing him to the ground, and said ties falling upon him, inflicting the injuries hereinafter complained of.

## VI.

That the cords, muscles, tendons and nerves, and the bones [4] of the right leg in and about the knee joint were severely crushed, bruised and injured, causing exostosis; that the bones surrounding and involving the right knee joint were so badly crushed and injured, that a large body of bone has formed in and around said knee joint, rendering said knee permanently stiff, and plaintiff is unable to bend or flex the same, and will forever suffer great pain and inconvenience from said injuries, will be prevented from doing any work or labor requiring the use of said leg, and is and will be forever, a cripple, and will be required in future to move about with great pain, difficulty and inconveniences, and will thereby be compelled to suffer chagrin,

humiliation and mortification on account of his crippled condition.

### VII.

That said accident was caused and occasioned solely by through the negligence of defendant, its agents, servants and employees.

1. In piling and placing said ties in a dangerous, unsafe, inadequate and careless manner.

2. In failing to brace, protect and secure said ties, so that the same would not fall.

3. In permitting said dangerous structure and pile of ties to be and remain where children were accustomed to play.

4. In failing to exercise ordinary care in keeping said place in a reasonably safe condition.

5. In leaving said ties exposed and unprotected in a dangerous and unsafe condition.

### VIII.

That by reason of the facts hereinbefore referred to, plaintiff has been damaged in a large sum, to wit, the sum of \$20,000.00, no part of which has been paid.

WHEREFORE plaintiff demands judgment against the defendant in the sum of \$20,000.00, and his costs and disbursements herein. [5]

(Signed) PLUMMER & LAVIN,

Plaintiff's Attorneys.

State of Washington,

County of Spokane,—ss.

R. B. Willard, being first duly sworn, deposes and says: That he is the duly appointed guardian *ad litem* of Leslie Willard, the plaintiff herein; that he



has read the foregoing complaint, knows the contents thereof, and that the same is true.

(Signed) R. B. WILLARD.

Subscribed and sworn to before me this 25th day of September, 1915.

[Seal] (Signed) JOSEPH J. LAVIN,  
Notary Public for the State of Washington, Residing  
at Spokane.

[Endorsements]: Complaint. Filed in the U. S. District Court for the Eastern District of Washington, October 5, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [6]

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[Title of Court and Cause.]

**Answer.**

Now comes the above-named defendant and answering the complaint of the plaintiff herein and  
I.

**FOR A FIRST DEFENSE THERETO:**

1. Said defendant denies any knowledge or information sufficient upon which to form a belief as to the allegations of Paragraph I of said complaint, and therefore denies the same.

2. Said defendant admits the allegations of Paragraph II of said complaint.

3. Said defendant admits that at the time of the accident described in said complaint, it, the said defendant, had a pile of railway ties upon the right of way of said defendant in the town of Springdale, Stevens County, Washington.

4. Said defendant specifically denies the allegations of Paragraph IV of said complaint.

5. Said defendant admits that on or about the 23d day of February, 1914, said Leslie Willard suffered some injuries at or near the town of Springdale, Washington.

6. Said defendant admits that at the time of said accident the said plaintiff suffered some injuries to his knee.

7. Said defendant specifically denies the allegations of Paragraph VII of said complaint. [7]

8. Said defendant specifically denies that the plaintiff has been damaged by any negligence on the part of said defendant, either in the sum of twenty thousand dollars (\$20,000) or in any sum whatever.

9. Said defendant specifically denies each and every allegation, matter and thing in said complaint contained except as is hereinbefore specifically admitted.

## II.

### FOR A SECOND DEFENSE:

1. Said defendant reaffirms and alleges all those matters and things contained in and set forth in paragraphs 1 to 7, inclusive, of said defendant's first defense hereto.

2. Defendant denies each and every allegation, matter and thing in said complaint contained, except as is hereinafter specifically admitted.

3. Said defendant alleges that any injuries suffered by plaintiff were caused by the negligence and carelessness of him, the said plaintiff, and of the said plaintiff's parents, and not by the negligence and

carelessness of the defendant, and that the said negligence and carelessness on the part of said plaintiff and his parents were efficient causes which contributed to cause whatever injuries plaintiff suffered at the time of said accident.

WHEREFORE, defendant prays judgment that plaintiff take nothing by his complaint and that it have and recover its costs and disbursements herein.

(Signed) CHARLES S. ALBERT,  
THOMAS BALMER,  
Attorneys for Defendant. [8]

[Endorsements]: Answer. Due service of the within Answer by a true copy thereof is hereby admitted at Spokane, Washington, this 27th day of December, A. D. 1915. (Signed) Plummer & Lavin, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, December 29, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [9]

---

[Title of Court and Cause.]

**Reply.**

Comes now the above-named plaintiff, and replying to defendant's answer herein:

I.

Denies paragraph 3 of defendant's second defense.

(Signed) PLUMMER & LAVIN,  
Attorneys for Plaintiff.



State of Washington,  
County of Spokane,—ss.

W. H. Plummer, being first duly sworn, deposes and says: That he is one of the attorneys for the above-named plaintiff; that he makes this verification on behalf of the plaintiff for the reason that plaintiff is at this time out of Spokane County; that he has read the foregoing reply, knows the contents thereof, and that the same is true.

(Signed) W. H. PLUMMER.

Subscribed and sworn to before me this 31st day of December, 1915.

[Seal] (Signed) JOSEPH J. LAVIN,  
Notary Public for Washington, Residing at Spokane,  
Wash. [10]

[Endorsements]: Reply. Service of the within reply is acknowledged this 3d day of January, 1916. (Signed) Charles S. Albert, Attorney for Defendant. Filed in the U. S. District Court for the Eastern District of Washington, January 4, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [11]

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[Title of Court and Cause.]

**Verdict.**

We, the jury in the above-entitled cause, find for the plaintiff, and fix the amount of his recovery at the sum of fifteen hundred dollars (\$1500.00).

(Signed) H. J. MARTIN,  
Foreman.

[Endorsements]: Verdict. Filed January 22, 1916. W. H. Hare, Clerk. [12]

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[Title of Court and Cause.]

**Judgment.**

This cause having heretofore come on regularly for before the Court and a jury, plaintiff appearing in person and by his attorneys, Plummer & Lavin, and the defendant appearing through its attorneys, Charles S. Albert and Thomas Balmer, and said cause having been regularly submitted to the jury, and the jury having retired to deliberate upon the verdict, and thereafter having returned their verdict into the court, awarding to the plaintiff the sum of \$1500.00;

It is hereby ORDERED, ADJUDGED and DECREED, that upon the verdict of said jury, and the Court being fully advised in the premises, that plaintiff have and recover against defendant the sum of \$1500.00, and his costs and disbursements hereafter to be taxed.

Done in open court this 26th day of January, 1916.

(Signed) FRANK H. RUDKIN,

Judge.

O. K. as to form:

(Signed) CHARLES S. ALBERT and  
THOMAS BALMER,

Defendant's Attorneys.

[Endorsements]: Judgment. Filed in the U. S. District Court for the Eastern District of Washing-

ton, January 26, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [13]

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[Title of Court and Cause.]

**Motion for New Trial.**

Now comes the above-named defendant, and moves the Court for an order to set aside the verdict of the jury herein and grant a new trial of the above-entitled cause, upon the following grounds:

1. Excessive damages appearing to have been given under the influence of passion or prejudice.
2. Insufficiency of the evidence to justify the verdict.
3. Error in law occurring at the trial and excepted to by the defendant.
4. That neither the evidence nor the testimony is sufficient to show, either directly or indirectly that the defendant or anyone for whom it was responsible was guilty of any negligence, or that it was guilty of any breach of duty which it owed towards the plaintiff.
5. That the evidence is not sufficient to show that a cause of action has been proven against the defendant, either as alleged in the complaint or otherwise.
6. That the evidence is insufficient to show a cause of action against the defendant, in that the accident which happened to the plaintiff, was caused by the act and negligence of himself and his companion, who was with him, and not by reason of any negligence on the part of the defendant.



7. That the evidence was insufficient to support a cause [14] of action against the defendant, in that it was not shown that the ties in question were in their nature alluring or attractive to children, or that they were in or of themselves dangerous, nor was it shown that even if they were not alluring or attractive to children, that if children played about them they were obviously dangerous if such children came in contact therewith.

8. That the Court erred at the trial in allowing the witness, R. B. Willard, to answer the question: "Do you know how many ties fell?"; that the Court erred in denying the defendant's motion for nonsuit made at the close of plaintiff's case; that the Court erred in refusing to allow the witness C. W. Magers to answer the question: "Mr. Magers, just tell how these ties were piled": that the Court erred in refusing to admit Defendant's Exhibit 7 in evidence; that the Court erred in denying the defendant's motion to direct a verdict for the defendant at the close of all the testimony.

Said motion is based upon the pleadings and papers on file, upon the minutes of the court, including not only the clerk's minutes, but any notes or memorandum which may have been kept by the Judge of this court in the trial thereof, and also the reporter's transcript of his shorthand notes of said trial.

Dated at Spokane, Washington, this 31st day of January, 1916.

(Signed) CHARLES S. ALBERT,  
THOMAS BALMER,  
Attorneys for Defendant.

I certify that the filing of the within motion is allowed this 31st day of January, 1916.

(Signed) FRANK H. RUDKIN,  
Judge. [15]

[Endorsements]: Motion for New Trial. Due service of the within motion by a true copy thereof, is hereby admitted at Spokane, Washington, this 31st day of January, 1916. (Signed) Plummer & Lavin, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, January 31, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [16]

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[Title of Court and Cause.]

**Order [Denying Motion for New Trial].**

This cause coming on to be heard upon defendant's motion for a new trial, the above-named defendant appearing by Charles S. Albert and Thomas Balmer, its attorneys of record, in behalf of said motion, and the above-named plaintiff appearing by his attorneys, Plummer & Lavin, in opposition thereto, after hearing said motion and the Court being duly advised in the premises:

It is ORDERED that said motion be, and the same is hereby denied, to which ruling defendant excepts

and exception is allowed.

Done in open court this 7th day of February, 1916.

(Signed) FRANK H. RUDKIN,  
Judge.

[Endorsements]: Order Denying Motion for New Trial. Filed in the U. S. District Court for the Eastern District of Washington, February 7, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [17]

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[Title of Court and Cause.]

**Bill of Exceptions.**

BE IT REMEMBERED that heretofore, to wit, on the 21st day of January, 1916, one of the days of the September Term of the United States District Court for the Eastern District of Washington, Northern Division, before Honorable Frank H. Rudkin, Judge of said court, presiding, this cause came on for trial on the pleadings heretofore filed herein.

This was an action at law to recover damages for personal injuries sustained by the plaintiff, alleged to have occurred by said plaintiff falling from a pile of ties at Springdale, Washington, upon the defendant's right of way, upon the 23d day of February, 1914.

Plaintiff appeared in person and by Messrs. Plummer & Lavin, his attorneys, and the defendant appeared by Charles S. Albert and Thomas Balmer, its attorneys, and a jury being duly impanelled and sworn to try the case, the following proceedings were had and testimony taken.



An opening statement to the jury was made by Mr. Lavin for the plaintiff.

Thereupon the following proceedings were had:

Plaintiff offered a certified copy of the order of the State Court appointing the guardian *ad litem*, which was objected to [18] by the defendant, and thereupon the said plaintiff asked the Court to appoint Joseph J. Lavin as guardian *ad litem* of the plaintiff, which appointment was made.

**[Testimony of Leslie Willard, in His Own Behalf.]**

Thereupon LESLIE WILLARD, being called as a witness in his own behalf, and being first duly sworn, testified as follows:

**TESTIMONY OF LESLIE WILLARD.**

My name is Leslie Willard, I will be twelve years old next February, the 21st. I live at Springdale and have lived there nine or ten years. I am going to school. I have been going to school about six years, I guess. I remember the 23d day of February, 1914, when I was hurt on some ties at Springdale. These ties were just a little ways from the wagon road, about two or three feet. (6) That is the wagon road that runs across the railroad track. There is a path right by the side of the ties, two or three feet from them. That was the only road that runs across the railroad track at Springdale. I don't know how close these ties were to the railroad track. I don't know how high these ties were piled.

Mr. ALBERT.—I think it is admitted in the answer that they were about eight ties high. (7)

Being further examined by Mr. Lavin on behalf of

(Testimony of Leslie Willard.)

the plaintiff, Leslie Willard, testified:

I played on this pile of ties once before I got hurt that I know of. I might have played there more. I played around them about six weeks before with just one more boy.

Q. How did you happen to go there to play?

A. We were just playing around. We were just playing around there first and then we thought we would go up and play wood tag, and so we went up on top and played wood tag. If anybody gets off of the wood, touch them or they will have to touch you. When you are on wood they can't touch you and when you are off they can. We would climb up on top of that pile of ties. The next time I [19] happened to go there there was a team getting weighed and some men around it and we couldn't see and we went up on top to watch the team. (8) We had not been playing on the ties that day before that time. I was climbing up on the end of the ties on the side of the pile to watch the team and they fell down. I was climbing up on the end of the ties. I climbed up on the end of the ties and they fell down with me. (9) I fell to the ground. I don't know how many ties fell, about six to nine though. I don't know how many fell upon my body. I don't know when I fell to the ground in what position I was lying. I think I was lying on my side. I don't know. The ties were laying across my legs; I don't know how many. They fell on my right leg. The first one I remember who was to me after I had fallen was John Taylor. I didn't see Mr. Williams, the

(Testimony of Leslie Willard.)

livery-barn man. (10) John Taylor took the tie off of me before I could get up. There were other people around there. I didn't have any pain in my right leg then, but just a little while after I did. I tried to walk, but I couldn't; it hurt so bad. My right leg hurt so badly. Mr. Newton carried me home. Two or three days after I got home the doctor came, Dr. Lewis. (11) All I can remember is he called three times, but he called more I think and examined my leg. I don't know how long I was in bed. Sometimes I have pain in my leg now, not all the time. Sometimes two or three days, and sometimes every day. I can bend my right knee joint a little bit. I run sometimes. When I run I throw my right leg out to the side. I have difficulty in putting on my shoes. (12) I can't reach down to my foot to get them off.

My leg is about the same as time has gone on. At first I could bend my leg all right, but after awhile it grew stiff. By standing up I can bend my knee a little. That is as far as I can bend it. I can't bend it lower than that. It hurts. (13) I have to throw my leg out when I run; it won't bend up.

Sometimes [20] when I walk I have to throw it out. I walk along here in front of the jury and I run in front of the jury. (13) I noticed while I was playing on these ties how close together they were piled. The ties were about three inches apart. They had ice underneath them. (15) I never saw boys playing around those ties before.

Q. You were never out around the ties but the two



(Testimony of Leslie Willard.)

times that you have testified to?

A. I have been around the barn up there. The barn is about 90 or 100 feet from the ties.

The COURT.—Were they hewed or sawed ties?

Mr. ALBERT.—They were hewed ties. (16)

Cross-examination.

Whereupon the witness was cross-examined by Mr. Albert and testified as follows:

At the time I first went there before I fell, about six weeks before, Jimmy Stevens was with me. On the day that I was hurt Murtha Cline was with me. He is here. (17) The first time I went there I got up on the ties. That was six weeks before. That was the time I was playing wood tag. If you touch wood you are all right. That is the way you play it. It doesn't make any difference whether you are on wood, over it or anything of that sort, just so you touched it, you were free. That was what I was doing the day I was playing up there with Stevens. His first name is Jimmy. Six weeks after this Murtha and I were up there. We were just watching the horses and the men gathered around there, then I went up there. I went up there to watch the horses. The men were gathered around there when they were weighing the horses. (18) That was what I was watching. Before that I was standing right in there, this side of the barn, about half way from the barn to the ties. The scales where they were weighing the horses were between me and where the barn was. Up away from the road fur-

(Testimony of Leslie Willard.)

ther. When they brought these horses along there Murtha and I [21] started to go down to get onto the ties. These ties were piled along there in a long pile. I don't know how long the pile was. At the time I was playing wood tag down there before, I got up on the top of the ties (19) and walked over the ties. They didn't any of them fall with us, and we got down off of them all right, and we got up on them all right. The ties were piled about the same, just as they were the last time I got on or tried to get on. At the time we tried to get on, I was on the end of the ties and the side of the pile. (20)

The ties were piled with one end towards the railroad track and the other end was piled away and I got down on the corner of the pile. I was taking hold of the end of the ties and putting my feet in the end of them, and climbing up on top of them. I had just gotten up on the top on my knees when the ties fell. I had gotten on my knees on the end tie, when the tie started to fall, and when it fell I fell with it. Murtha was on the other corner on the end of the ties. When I fell the ties fell on me. I wasn't paying very much attention to how many ties had fallen. All I knew about it was there was a tie on my leg that was hurting me. At first somebody ran and took the ties off of me, and then another man carried me away. They picked these ties off first and then another man, Mr. Newton, came along and picked me up and carried me home. The doctor

(Testimony of Leslie Willard.)

came two or three days after this. There were two or three days in there when he didn't come at first at all, and then he came three or four or five times afterwards. (22) I don't remember his coming any more. That was Dr. Lewis and he was the only doctor we had. He lived at Springdale. I and my father live there now. I didn't see Mr. Williams around there. When I say that the ties were three inches apart, I was referring to the holes that are in there between the ties. (23) The ties were round and were pile eight of them right on top of each other. I mean there was about three inches of ice and stuff [22] underneath them, as they were lying on top of each other. There might not have been three inches. It might have been two or three inches.

Q. When did you see this?

A. I seen the snow underneath them?

Q. Yes.

A. When I looked there before, there was a little snow underneath them. (24) When I was up there before I saw some ice and snow between each of the ties. They were piled up there one on top of the other, eight high. The second time I went up there I didn't look to see if there was any ice or snow under them. I remembered what I had seen before, and I thought it was just the same the second time as it was the first. These ties that were piled in there, the next row of eight ties were right close to the first row and so on, all the way back, pushed up against each other. (25)



(Testimony of Leslie Willard.)

Redirect Examination.

Upon redirect examination by Mr. Lavin he testified:

I paid attention to how the different tiers of ties were together. They were together against each other. Before I got hurt they were right together to each other. There was no brace or timber against the end that fell, and the end from which I fell was the end that was closest to this path I have described.  
(26)

Recross-examination.

Whereupon, upon recross-examination by Mr. Albert, he testified:

The path that I am talking about is that path running alongside of the road. The end of the pile was right up by the path. That is the side of the tie. The side of the tie was on the side of the path and on the other side of the path was the road. The path was right up next to the road and the ties were two or three feet from the path. (26, 27)

Redirect Examination.

Whereupon, upon redirect examination by Mr. Lavin, he testified: [23]

The schoolhouse is on the north side of the track. The pathway was used by some of the school children going from the southern part of the town to the schoolhouse on the north side. (27)

Recross-examination.

Whereupon, upon recross-examination by Mr. Albert, he testified:

(Testimony of Leslie Willard.)

I live right down in the middle of town. The most of Springdale is north of the track. There is a lively barn and a few houses on the south side of the track. The track runs generally east and west. My home is about two or three blocks from the track. My father ran a restaurant there. I lived in the restaurant building. When I went from the depot to the restaurant I had to go about two blocks. The depot is right near this place where I had the accident, just on the other side of the road. (28, 29)

**[Testimony of Dr. C. F. Eikenbary, for Plaintiff.]**

Thereupon Dr. C. F. EIKENBARY was called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows:

**TESTIMONY OF DR. C. F. EIKENBARY.**

(Examined by Mr. LAVIN for the Plaintiff.)

I am a physician and surgeon engaged in the practice of my profession since 1903.

Whereupon the doctor's qualifications were admitted by Mr. Albert.

I made an examination of the plaintiff in September, 1915. The examination concerned only the knee. The boy complained of an inability to bend and extend the knee as far as normal and the examination was concerned entirely with that and the making of an X-ray picture of the knee. (30)

The physical examination shows that he has, back of the knee, of the right knee, a mass of bone which is probably an inch in length, and how wide it is not possible to state—may be an inch [24] wide or

(Testimony of Dr. C. F. Eikenbary.)

may be not more than half that width, that lays almost directly back of the knee joint, which obstructs the movement of the joint. At the time I examined the boy he was able to extend his leg—that is to put it out in this way—within five degrees. In other words, he had forty degrees of motion at that time. The X-ray showed this mass of bone back of the knee.

This view on the left is a picture of the knee taken from before, backwards, straight through the knee joint, and really I would not be positive that it shows anything. I rather think that this little area here is the mass of bone but I would not be sure of that. But the lateral view, the view from side to side, shows a mass of bone back of the knee joint, and shows a roughening of this region here as if there had been a thickness or tearing up of the covering of the bone which is represented by this mass of the joint, and this is the mass referred to in this region. This is practically a mechanical way of obstructing that joint. (31)

This mass of bone that I have described looks as if it had grown to the other bone. He can move his leg now at an angle of forty degrees possibly without very much pain. If he should attempt to go beyond that angle it probably would produce pain.

Whereupon Mr. Albert admitted that whatever injury the boy suffered, as far as the knee was concerned, he assumed was caused by the accident. (32)



(Testimony of Dr. C. F. Eikenbary.)

Cross-examination.

Whereupon, upon cross-examination by Mr. Albert, the witness testified:

I have had considerable experience in these bone fractures, anklyosis and all that sort of thing, bony growths. I am constantly engaged in work of that sort. That is my specialty. In connection with it I have performed many operations. No operation has been attempted upon this boy yet.

Whereupon the following proceedings were had:

Q. To remove that bone would not be a difficult operation? [25]

Mr. LAVIN.—Just a minute. We object to that as incompetent, irrelevant and immaterial.

Mr. PLUMMER.—And not cross-examination. We did not ask him any questions about mending the leg or anything in reference to that.

Mr. ALBERT.—Well, now, if they are going to object to it on that ground I ask the privilege of the Court now to make Dr. Eikenbary my witness on that point.

Mr. PLUMMER.—All right.

The COURT.—To save time you may proceed.  
(33)

Direct Examination.

Whereupon Dr. Eikenbary on direct examination by Mr. Albert testified as follows:

I regard an operation around the knee joint as being a serious operation. This is what is called a posterior growth. The knee cap itself or the front part of the knee joint would probably not be touched

(Testimony of Dr. C. F. Eikenbary.)

by the operation at all. It is hardly possible you could remove this growth without entering the joint cavity. You might not, but you probably would. I perform operations on the knee joint quite frequently, four or five a month. This is a feasible practical operation, and I would not hesitate to perform this operation if the matter were put in my care. (34) There are no two cases of knee joint operations that are alike and it would not be possible to say definitely as to time. I should say in the ordinary and normal course of treatment it might take three weeks or several months. I think the chances of getting a good result are pretty good. I don't think you could promise it positively, but I think the chances of getting a good result that would be satisfactory, would be very good. I mean a result that would be satisfactory to the boy. I think that the limitation of the range of motion could be increased. He has now motion to within five degrees of a straight line and an inflection of forty-five degrees and I think that probably could be increased. Whether it [26] could be increased so that he would have the full range of motion I do not know. That would be a very hard thing to tell. It might fall somewhat short of that. My best judgment is from my experience from these operations, I think undoubtedly the chances of his getting a good result would be very good. (35) I think you could feel fairly safe in promising him that he would have a great deal more motion than he has now. Whether that would be as good as the other knee or

(Testimony of Dr. C. F. Eikenbary.)

not I would hesitate to tell you that. I think the chances are he would get a good result. I wouldn't be limited as to time. In my best judgment I should say anywhere from a month to a number of months, from one month to three or four. (36) The reasonable value of such services until you are sure of the case, as I say, might be anywhere from one month to three or four, would be about three hundred dollars.

Cross-examination.

Whereupon, upon cross-examination by Mr. Plummer, he testified as follows:

I base my opinion of the result of this operation on the experience of the knee joint surgery in general. I don't know that I have ever had a case where I had just exactly that shaped mass in exactly that location. It is always possible in an operation that certain conditions might arise which you do not anticipate when you start in. (37) In case an operation is performed I think the chances of his getting a satisfactory result are fairly good. We doctors don't guarantee results any more than lawyers do. I should feel very badly if the operation might cause his leg to be in a worse condition than it is now. We wouldn't anticipate anything of that kind. It is true doctors have lots of things occur that they don't anticipate. (38) I should doubt if the leg would be as good as before, but I think it would be a result that would be satisfactory to him, better than it is now. I believe he would be a good deal better off.



(Testimony of Dr. C. F. Eikenbary.)

Redirect Examination.

Whereupon, upon redirect examination by Mr. Albert, he [27] testified:

When I say that the leg might perhaps not be as good, he might have a range of motion that would go anywhere from a straight line to say ninety degrees or even a hundred degrees, which for all intents and purposes would be a perfectly good knee, and yet not have quite the range of motion in it that a normal knee has, but for all ordinary work it would not make much difference. (39)

Recross-examination.

Whereupon, upon recross-examination by Mr. Plummer, he testified:

All joints are complicated. The knee joint is a complicated joint. I don't know that it is the hardest to handle and treat. I don't believe it is any more difficult to handle the knee joint, probably not as difficult as it is to handle the elbow joint, although it is a difficult thing. The elbow and knee joints are the most complicated of the joints we go into. (40)

Whereupon the X-ray plate was offered in evidence, marked Plaintiff's Exhibit 1, and was admitted without objection.

**[Testimony of Dr. E. L. Kimball, for Plaintiff.]**

Thereupon DR. E. L. KIMBALL, called as a witness on behalf of the plaintiff, being first duly sworn, testified:

I am a physician and surgeon in the practice of

(Testimony of Dr. E. L. Kimball.)

my profession. I have been practicing medicine and surgery for forty years and am duly licensed in this state. I have seen Leslie Willard. I made an examination of his leg Monday or Tuesday of this week. My examination consisted of an examination of the knee alleged to have been injured. It was made in connection with Dr. Baker. (41)

Our examination did not comprise the plate that was made, and which we were told had been made on the case, but there is, to the sense of touch, a bony growth on the back and inner side—or at the back of the right knee joint, of the upper bone, of that joint that belongs to the thigh, here, and the limitation of motion is as I heard Dr. Eikenbary describe it, just about perhaps forty degrees [28] —I mean a little over thirty, into the right angle from a straight line to an up and down line, a limitation of motion to about a third perhaps of the motion that the limb should normally have; with an expression of considerable pain in the boy when I tried to force it beyond the point where the obstruction came to show itself. There isn't any other symptom or condition that we could see except that limitation of motion and this lump, which shows in the back of the joint, with the pain, which is very evident when you give the leg more forcible movement.

He has to shorten his step quite a little with that right leg, as he walks, and he cannot run to any very lively extent. Kids, of course, will do most anything, but there is a marked limitation of movement

(Testimony of Dr. E. L. Kimball.)

even in his walk, or in the stride which he takes. The condition which I found there is absolutely permanent now.

Q. Is there anything that you know, either through your experience or practice, medical or surgical, that could be done that could relieve the condition that you found?

A. Well, that raises the question. It is very easy to cut and saw, and to open up the parts there, and chisel off this lump, a merely mechanical job which does not require in that particular part any great skill to do, but a great thing in surgery, of course, is to prevent such injury, and such infection as creates inflammatory conditions around there. While that lump could be chiseled off, it is a question what I would do with it if it was my own boy, and I should hesitate quite awhile before I would let anybody touch him, for fear that an infection or inflammation of the joint might make the joint much stiffer than it is, or might endanger his life. (42, 43)

**[Testimony of Dr. A. C. Baker, for Plaintiff.]**

Thereupon Dr. A. C. BAKER, being called as a witness on behalf of the plaintiff and being duly sworn, testified as follows: [29]

**TESTIMONY OF DR. A. C. BAKER.**

I am a physician and surgeon. I have been engaged in that profession fourteen years. Am a graduate of the University of Kansas. I made an examination of the plaintiff in this case in connection with Dr. Kimball. We found a swelling at the



(Testimony of Dr. A. C. Baker.)

posterior of the knee joint, and a limitation of motion, and some thickening of the ligaments around the knee joints; that always accompanies stiffness. The condition in which I found him was permanent. The mass of bone which I found there was perhaps an inch or an inch and a half of bone, lengthwise. A successful operation could probably be performed which would relieve the condition to some extent. In the case of an infection it would involve danger in that he might get a stiff knee. That is not one of the results that ordinarily follow an operation of the joint, but in a certain small percentage.

**[Testimony of Harry Whitney, for Plaintiff.]**

HARRY WHITNEY, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

**TESTIMONY OF HARRY WHITNEY.**

I am 17 years old. I have lived in Springdale for seventeen years. I was in Springdale the day that Leslie got hurt. I don't remember for sure. I know the pile of ties described. I have played on these ties before. I have been on them sometimes two or three times a day, and maybe I would not be on there for a couple of days. (46) We were on there nearly all winter, some time during the winter. Sometimes there would be four or five boys playing there, and sometimes only two or three. We were playing on them just for fun, playing wood tag. Just get up on the ties and run around up on the tie pile and run around over the ties. They were

(Testimony of Harry Whitney.)

kind of piled up and down. When they are piled this way they are piled close together, and sometimes they are not piled close together, sometimes they were. In some places the openings between the tiers were about (indicating two inches) and other places smaller and in other places bigger, in some places. [30] (47) This pile of ties was about 100 feet from the depot, I judge. There was no obstruction between the depot and this pile of ties. From the pile of ties you could see the depot. There were no houses around the ties in that neighborhood. Only one barn that I know of. The pile of ties was about 15 or 20 feet from the road. There is a pathway there. The pathway is about 15 feet from the ties. I live on the north side of the track. (49) That is the same side the depot is on.

Cross-examination.

Whereupon, upon cross-examination by Mr. Albert he testified:

I played on the ties pretty nearly all winter, part of the time. We wasn't on just one certain pile, we were all over on all the piles. There were other piles there. Those piles were a little further east of the road than this pile was. They were all piled on the south side of the track. There was some on the west side of the road, some on both sides. The yards are on the west side. It was about an even number of ties on each side. We got up on top of these ties, down off of them and ran all over them. (50) None of them ever fell with me. I don't know of

(Testimony of Harry Whitney.)

any of them falling except what I knew about Leslie. I didn't see the ties being brought in at any time. I don't know who brought them in, or how they got there. I didn't pay any particular attention to this particular pile of ties that Leslie got hurt on. I don't recall particularly with reference to just how that was piled up there. (51)

**[Testimony of Claire Willard, for Plaintiff.]**

CLAIRE WILLARD, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

**TESTIMONY OF CLAIRE WILLARD.**

I am a brother of Leslie, aged 17. I live in Springdale, have lived there about ten years. I have played on this pile of ties referred to in the testimony. Every once in awhile I would be on them. One day I would be on and then I wouldn't be on for [31] quite awhile. It would be along in the evening. It would not be very long. Sometimes in the afternoon. I have been on the tie pile with them, but I have not noticed how many boys was on there, three or four. I have not noticed any more than that on them at any one time. I was there once in awhile while the ties were piled there. They was piled one on top of the other. Some was close together and others farther. They were apart all the way from that far down, for instance (illustrating) about eight inches. (53)

**Cross-examination.**

Whereupon, upon cross-examination he testified:



(Testimony of Claire Willard.)

I paid no particular attention to this particular pile before this, and don't remember particularly with reference to it at all. I played on there once a day, and then for a long time would not play there. When I played up and down on these ties none of them fell with me, and I never knew of them having fallen on anybody. (54)

**[Testimony of Clifford Ragsdale, for Plaintiff.]**

CLIFFORD RAGSDALE, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

**TESTIMONY OF CLIFFORD RAGSDALE.**

I am fifteen years old, live in Springdale. I played on this pile of ties two or three times a day for an hour for about two months. Sometimes two or three or two to four boys would play there with me. This was before Leslie got hurt. These ties were piled on top of each other. Some were close together and some had holes in them. These holes would be about six inches.

**Cross-examination.**

Whereupon, upon cross-examination by Mr. Albert he testified as follows:

I played on these ties before. I played with Leslie on them before he got hurt, once. I was not around the day Jimmy Stevens was with him. I would get up on top of the ties, crawl up on them, (56) and sit down. I never had any difficulty with them. They never fell down with me. I never paid

any particular [32] attention to this particular pile of ties that was there. (57)

**[Testimony of Ervin La France, for Plaintiff.]**

ERVIN LA FRANCE, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

**TESTIMONY OF ERVIN LA FRANCE.**

I am fifteen, live in Springdale. I know the pile of ties that has been described. I played there prior to the time Leslie was injured about half an hour for about a month. Two or three boys would be playing there. (58) Wood tag.

**Cross-examination.**

Upon cross-examination by Mr. Albert he testified as follows:

I didn't play with Leslie. I played with other boys. Some of the piles looked all right to me. I don't remember anything particular about this particular pile, or the way it was piled, or anything of that sort. None of these ties ever fell with me playing there. (59)

**Redirect Examination.**

On redirect examination by Mr. Lavin, he testified:

I live west of town, on the west side of the track. I wouldn't pass this pile of ties in going to school. (60)

**[Testimony of Frank Veenhuis, for Plaintiff.]**

FRANK VEENHUIS, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

**TESTIMONY OF FRANK VEENHUIS.**

I am thirteen, live at Springdale. I go to school, and live on the south side of the track. In going to and from school I pass by the pile of ties described, about six times a day, about five feet from them on the roadway. I noticed five or six boys playing on the ties before Leslie was hurt. (61) Playing hide-and-go-seek and cross-tag. Had continued for two or three months. That occurred almost daily, at night most of the time before the train came in, after school. On Saturdays sometimes, too. I never paid any particular attention to this pile. I don't know how they were piled.

**Cross-examination.**

Whereupon, upon cross-examination by Mr. Albert, he [33] testified as follows:

I remember playing on this particular pile. I have seen a lot of the boys playing on that pile. (62) This was a couple of weeks we were playing on the pile. We didn't play all of the time on these ties. When we did play on them the ties did not fall. We did not play on them, we played around them. The other boys got on, but I didn't. The ties did not fall with them. (63)



**[Testimony of George Williams, for Plaintiff.]**

GEORGE WILLIAMS, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

**TESTIMONY OF GEORGE WILLIAMS.**

I am in the livery business in Springdale. Have lived there about nine years. I know the pile of ties that has been described in the evidence. About one-third of the population lived on the west side of the track at Springdale. I operate a livery barn about a block from the ties. I know the pathway described. That pathway was eight or ten feet from the ties. (64) It was about thirty feet from the end of the ties to the middle of the traveled portion of the street. I couldn't say how close the ties were to the eastern limit of the street, side lines of the street; I have no idea. (65) That is the only street in Springdale that crosses the track from the north to the south side. All the children passing over this road to school have got to pass by this pathway. I was there on the day that Leslie Willard was injured. On that day I was going down town, and I heard the boys yelling, the children screaming, and this Leslie, and I ran to where he was at and lifted the ties off and I told him to get up from under the ties and he got up and went about thirty feet and commenced crying and fell down. (66) I had not observed this pile of ties before the date of the happening of the accident and paid no attention whatever to them. The boy was lying flat on his back and the ties between his legs. (67)

**[Testimony of J. P. Brown, for Plaintiff.]**

J. P. BROWN, called as a witness on behalf of the [34] plaintiff, being duly sworn, testified as follows:

**TESTIMONY OF J. P. BROWN.**

I have lived at Springdale for about four years. My business is well drilling. I am familiar with the pile of ties described. I never hauled any ties. I helped the Magers unload two loads of ties. Whether them was the ties that fell or not, I could not say. We unloaded them right near the street, on the south side of the depot, between the depot and the livery barn on the south side of the railroad track and on the east side of the street. On the east side of the roadway. (68) I should judge about seventy-five feet from the livery barn, and about the same distance from the railroad track. We placed the ties we unloaded close to the street, right near the street. I think this was in January, 1914. I had nothing to do with the ties, only to help Mr. Mager. They were not my property. He said they were too heavy for him to handle alone, and he asked me to go and help him. I handled these ties. Some of them were pretty heavy. They was tamarack and there was snow and ice on them, which made them pretty heavy to handle. I should judge they would weigh 300 pounds each. (69) Mr. Mager directed the place where they should be piled. I don't know whether any of the agents of the company were around there. Mr. Mager just drove up

(Testimony of J. P. Brown.)

there and unloaded the ties where he stopped, and threw some little poles down, probably three inches through, and we unloaded the ties, and I had nothing more to do. They were piled on top of the snow. I should judge there was a foot of snow under the ties, if not more. There was snow or ice when the ties were piled there. Some of them when they were piled were together or almost together and others would lay three inches apart. I didn't place any support or brace against them, or anybody else that I seen. I passed there a number of times and noticed the ties, and never noticed them being braced in any way. (70) [35]

Cross-examination.

Whereupon, upon cross-examination by Mr. Albert, he testified as follows:

I was helping Mr. Magers unload. He was a rancher; lived away from the track. He was bringing in the ties and delivering them on the right of way. Mr. Magers was alone when I helped him unload. I helped Mr. Magers, the father. We put down skids. I guess there was all of a foot of snow on the ground. We unloaded the ties on the skids. (71) The skids was put down on top of the snow and the ties laid on the skids. Some of the ties weighed 300 pounds. Couldn't say what date it was. It was near the first part of January, I am satisfied. It might have been in December. It was after Christmas. There was quite a number of ties piled between there and the railroad track, between



(Testimony of J. P. Brown.)

where we put ours and the railroad track. These ties were piled in ranks. There was a rank near the track and we were piling the rank upon the back, behind the first one, between that and the barn. So, as a matter of fact, this was not the one that was nearest the track that I had anything to do with. Didn't seem so to me. (73) Some of the ties would not go over 150 and others would weigh 300.

Redirect Examination.

Whereupon, upon redirect examination by Mr. Lavin, he testified:

I judge this pile of ties was about 100 feet from the depot, fronting across the tracks. I don't remember of ever seeing the agent of the company around there at any time while I was passing this pile of ties. I don't remember of seeing any of the officials around the ties. The depot extended up to the pile of ties, on the other side of the track and from the depot you can look across the track. (73)

**[Testimony of C. W. Magers, for Plaintiff.]**

C. W. MAGERS, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

TESTIMONY OF C. W. MAGERS.

I reside seven miles from Springdale. I farm a little [36] and log a little. Am familiar with the pile of ties described here. I sold them to the railroad company. Me and my son made them and hauled them and laid them there. I couldn't tell you when they were accepted, (75) or when I got my pay, the date, to save my life. These ties were

(Testimony of C. W. Magers.)

hauled somewhere from in December up until somewhere along in February. We hauled between seven or eight hundred of them altogether. There was about half of them accepted at first, and then we hauled another rick and made a double tier of it, and they was accepted later on. I could not say what time they was inspected. The ties went on the Great Northern, or the S. F. & N., a branch of the Great Northern; came through the Great Northern. (76) I got my check from the agent at Springdale, a check from the Great Northern Railway Company. I couldn't tell you exactly when we started hauling at this place, somewhere along the last of December or the first of January. I could not tell you just when we did start. I don't recall the accident to Leslie Willard. I wasn't there at the time. I don't know whether the agent told me where to put the ties, or whether I just pulled in there and went to unloading. I don't remember. I was to haul them down there anywhere I could find room and the first tier we put on there we put where the ties had been taken up. The first rick of ties was piled where they had been piled before. We piled as far as we had room and started on back of them. I should judge they were piled twenty-five or thirty feet from the center of the street, possibly somewhere from five to eight feet from the pathway. I don't know how far from the depot. It is right angling across the track from the end of the tie pile, angling across the track to the depot. The depot is on the opposite

(Testimony of C. W. Magers.)

side of the track. This would be towards the front side. (77, 78) I never saw any of the company officials around there while I was piling ties, the agent or anyone else, except the section foreman. He was there a day or two while we were unloading. We were still unloading on the twenty-third [37] of February, when this boy was hurt. (79) I don't know that I ever noticed him after we piled there. He was there while I was unloading a time or two, I am sure. I was talking with him once that I know of. Nobody on behalf of the company directed the manner or where these ties should be piled; nothing more than their bill in the depot. They specified the way they should be piled and the shape of the ties also.

Q. Did it describe the manner in which the ties should be piled?

A. Yes, sir, it described that they should be piled eight—

Mr. ALBERT.—Just a moment. That is objected to as not the best evidence.

Mr. PLUMMER.—We will ask counsel to produce one of those advertisements.

Mr. ALBERT.—I certainly shall. I have got it right here. That is what I have it for.

Q. Do you know how you piled these ties?

A. Eight high, on the first pile we put in there—piled them on tiers or culls that they had been piled on before. The back tier we throwed down some little poles we used on the sleigh to bind our ties on to hold them up. We piled them on the snow. I



(Testimony of C. W. Magers.)

can't say what depth it was; probably somewhere from ten to twelve inches deep. Some of the ties had snow and ice on them, and some of them did not have much on them. (80) Some of them would be piled up with a space between the ties; can't say just what it would be; possibly some might have an inch or two of ice on them and some of them had practically none on them, because they were hauled in as fast as they were made. Sometimes one of us would haul in and sometimes the other and some of them would have snow on them; in real bad weather it would freeze and make ice on them and others practically had no ice on them at all. The ties were not exactly of uniform height or uniform width. They ran [38] from six inches in width to probably fourteen or sixteen.

Q. And would you place a wide tie on top of a narrow tie?

A. Not many wide ones, but probably some of them twelve or fourteen inches, I suppose. We piled one on top of another. Some of them would be narrow and some of them would be wide, owing to the width of the ties. (81) There was no brace to prevent them from falling or slipping placed against them. (82) We put that pile down on the ground on the snow, and piled them one on top of the other, so they would run right from the bottom up and down. The wide ties and the narrow ties they went on just the same; if it was a wide one, they covered just that much more space, and if it was a

(Testimony of C. W. Magers.)

narrow one there was that much space between them. We did not endeavor to put the wide ones on the bottom. We started our pile wide enough so the ties would fit in there without having to crowd one over, if it was a narrow or a wide tie. We piled them like I piled lots of other ties, as far as that is concerned. (83)

#### Cross-examination.

Whereupon, upon cross-examination by Mr. Albert, he testified:

I and my two sons were engaged out in the country about seven miles from there, cutting ties. We would go out and cut these ties in the woods in the snow. In handling them there must necessarily some snow have gotten onto them and perhaps some little ice that came from the snow melting. That is the way we hauled them. Of course that is the way we did it. (84) They were made and hauled in and sometimes one of us took a load and sometimes another one would. They were hewn ties, not sawed, not square; they were peeled. Two sides were as flat as we could hew them and the sides were round. They came in various thicknesses, dimensions and widths. They were supposed to be and we tried to get them all the same length, according to specifications, but we couldn't make the sides exactly the same in the way we cut them. Then I and my two sons would haul these down to the depot, or down [39] to the right of way of the railroad company and pile them on the right of way. (85)

(Testimony of C. W. Magers.)

I couldn't tell you how many of these loads I hauled myself. Altogether there were seven or eight hundred ties there. We generally hauled from twenty to twenty-eight to a load. The first ties we put down there we put on ties where there had been other ties piled and the ties had been taken up. They were already laid there, the first ones were put on ties that had been piled there before. I didn't put nothing down. That was the first rick we put nearest the track. We took the place that was there and put the ties down upon it. (86) I knew that this was a place where these ties had been before. They had just been taken out of there, and I could see it. They had been fresh taken out of there; been moved some way. There wasn't any snow to any appreciable extent when we put these ties down in the first rank, which was the one nearest the track. We piled these bottom ties so that we would have, in building up the pile, to make an allowance for the ties that might be a little bit wider, so we would have room to put the ties in there. When we put the ties in, they were set pretty well together. (87) When we put the ties in we set up and piled as straight as you generally put them in that kind of shape. Of course, we couldn't make them perfectly solid with the snow and ice on them. Some of them didn't have snow and ice to amount to anything. The majority of them were not covered with ice. I couldn't tell when we commenced hauling. Might have hauled some in December. Can't tell you just



(Testimony of C. W. Magers.)

when we did start to haul. I have hauled ties there before. Piled them some place on the right of way where there is room. (88) We were supposed to be instructed by the agent where to put the ties. The usual time for hauling ties is in the winter. Most of the people up in that country haul at that time. We bring them in and dump them, make these skids for them, if there is snow or anything of that sort, put them down on skids and build up the pile. That is the way I have done. (89) [40]

**[Testimony of R. B. Willard, for Plaintiff.]**

R. B. WILLARD, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

**TESTIMONY OF R. B. WILLARD.**

I am the father of Leslie; reside at Springdale, have lived there in the neighborhood of eleven years. The first time I knew about Leslie having been injured was when Mr. Newton carried him in the door. He appeared to be suffering pain. He was kind of whining and crying a little. (91) I examined his leg at the time. I had him move his leg like that (indicating) and I says, "Leslie, can you move your foot?" He moved his foot. I said, "There is no bones broken." That was my idea of it. I didn't call a physician or surgeon then. I think it was the third day we called Dr. Lewis. He was in Springdale but left there a year ago this spring. I charged my mind that he made six trips. (92) The boy was placed in bed and remained in the neighborhood of—I think close to a month. He went on crutches for two or three weeks after he got out of bed, and

(Testimony of R. B. Willard.)

we watched him for a long time after that time and he seemed to be getting better. He moves about the same now as he has for the last year or fourteen months. We used different kinds of ointment on him, rubbed his leg, in accordance with the directions of the doctor. (94) In February, 1914, it was pretty nice weather. The very next day I went up there to see where he got hurt. I remember there was no snow there; it was all melted off; there was no snow there at all. It had been warm weather for about a month prior to the accident. It was like spring, pretty near summer weather some of the time, a little cool. (94)

Q. Do you know how many ties fell?

Mr. ALBERT.—I object to that as immaterial. His knowledge must be based upon what he obtained after the accident.

The COURT.—He can state how many ties were upon the ground.

Mr. ALBERT.—Isn't it for the jury to say what the condition [41] was that existed at the time of the accident, not at the time he went up there?

The COURT.—How long after the accident did you go there?

A. I think it was the next day.

The COURT.—I will permit him to answer the question. It is for the jury to say whether the conditions changed or not.

Mr. ALBERT.—I object to it on the ground that it is incompetent, irrelevant and immaterial and not

(Testimony of R. B. Willard.)

part of the *res gestae*.

The COURT.—Answer the question.

Mr. ALBERT.—Exception.

Exception allowed.

A. I can't say positively; six, seven, or eight; something like that, I can't say. There was part of two tiers fell and they were eight tiers high. (95) That was on the end of the pile nearest the street.

Cross-examination.

Whereupon, upon cross-examination by Mr. Albert, he testified:

I don't know how many ties was fallen. I had no idea of anything just more than seeing how well the boy got out of it. I think it was kind of summer weather up there for a month prior to this, if I remember it right.

**[Testimony of George Williams, for Plaintiff  
(Recalled).]**

GEORGE WILLIAMS, recalled as a witness on behalf of the plaintiff, testified on direct examination as follows:

**TESTIMONY OF GEORGE WILLIAMS.**

I heard these ties fall and ran to the boy. I can't say how many ties were on the ground. I have an idea there was part of two tiers fell down.

Cross-examination.

Whereupon, upon cross-examination by Mr. Albert, he testified:

I couldn't say how many fell on the ground. (97)



**[Testimony of C. W. Magers, for Plaintiff (Recalled).]**

C. W. MAGERS, recalled as a witness on behalf of the plaintiff, testified on direct examination as follows: [42]

**TESTIMONY OF C. W. MAGERS.**

These ties were inspected by the railroad company before the accident to the boy.

Whereupon the following proceedings were had:

Whereupon the plaintiff rested and the following proceedings were had:

Defendant moved the Court for a nonsuit on the same grounds as hereinafter set forth in the motion to direct a verdict, which motion was denied and excepted to by the defendant.

Whereupon counsel for the defendant made an opening statement to the jury and introduced the following testimony. (99)

**Defendant's Testimony.**

**[Testimony of Murtha Cline, for Defendant.]**

MURTHA CLINE, a witness produced by the defendant, being duly sworn, testified as follows:

**TESTIMONY OF MURTHA CLINE.**

I am ten years old, live in Springdale. I have known Leslie Willard for several years. I remember being with him at the time he got hurt a couple of years ago. We were coming from school. We came up to town and then as we was coming up to the tie pile they was weighing some horses up there and so they was prancing around a little and so we

(Testimony of Murtha Cline.)

thought we would go up there for protection. We got up on the ties near where that curve is on the side. There is a few little places, and we kind of stuck our toes in there and climbed up and got hold of the top of the pile and pulled on the ties up there. He climbed up on the north side and I climbed up on the south side. I was nearer the barn and he was nearest the track. I didn't get on top. There was a few pieces of ice in between the ties and a little snow and it was thawing, and it slipped when we was going up. The ties slipped. (101) We had hold of the top ties when they slipped. We had not gotten up on top yet. Leslie wasn't up on top yet. Three of the ties came down on top of us and the fourth was just hanging up there. Mr. Williams came over [43] and helped us. I don't know who was on Leslie's side, but Mr. Williams lifted them off of me, from the end that I was on.

Cross-examination.

Whereupon, upon cross-examination by Mr. Lavin, he testified:

There were three ties on top of us boys after they had fallen down. (102) I was bruised. That was all I got. I was on the south side and Leslie was on the north side. The pile of ties was about 30 or 40 feet long. (103) I would step on the ties. When I was climbing up I was looking forward and wasn't paying any attention to Leslie, because he was going up himself on the other end of the ties.

(Testimony of Murtha Cline.)

Redirect Examination.

Whereupon, upon redirect examination, he testified:

The pile of ties was about 15 feet from the side of the road. Leslie and I went up there together. Leslie and I started from school for home and we got up there and went to watch them weigh and the horses were prancing around and we just got up there for protection. We both climbed up there, that is all I know. I had been up on the other end of that pile. (105)

**[Testimony of Ben Magers, for Defendant.]**

BEN MAGERS, a witness called on behalf of the defendant, being duly sworn, testified as follows:

**TESTIMONY OF BEN MAGERS.**

I am son of Mr. Magers who has testified here already. I live seven miles from Springdale, and recall piling these ties that have been referred to. My father and brother helped me. We started, I think, about the 12th of January to pile them, finished somewhere around about the 20th of February. We piled them eight high, one on top of the other. The first pile we put on was on old ties and the second pile we put on was on poles. The ones we put on old ties was nearest to the track. (106) The piles were different sizes. One was quite a good deal larger than the other. I should judge there was probably two or three hundred in the first pile, and the balance was in the other pile. We found these old [44] ties on the ground there and piled



(Testimony of Ben Magers.)

those on the old ties. We started piling the first pile from the west end and that is where we found the old ties. That is the end nearest the road. (107) I guess these ties were piled as solid as we could pile them. I suppose some of them were probably loose a little bit. There were big ones and small ones; they couldn't all be piled solid together, very easy.

#### Cross-examination.

Whereupon, upon cross-examination by Mr. Plummer, he testified as follows:

They were piled as solid as we could pile them. They certainly would have been more solid if we had put some braces up against the end, I guess. When we piled them, one tie for instance would be a narrow tie, and then a wide tie would be put on top of that, then there would be a wide tie and then maybe a small, narrow one. Each tier was connected with the other tier, close together. They was just brushed up together, is all. Each tier was independent of the other.

#### Redirect Examination.

Whereupon, upon redirect examination, he testified as follows:

They were leaning against each other; they were laying together. I never knew of a pile of ties ever braced anywhere.

#### Recross-examination.

Whereupon, upon recross-examination by Mr. Plummer, he testified:

(Testimony of Ben Magers.)

If there was a tie eight inches wide on the face and then there was another tie on top of that that was fourteen inches wide, the eight inch tie would not be leaning up against anything, just like a letter "I." (109)

Redirect Examination.

Whereupon, upon redirect examination by **Mr. Albert**, he testified:

We made these ties in the woods, seven miles out of town. Some were being made while we were bringing the others in. As we made them we brought them in and piled them on the right of way. [45] (110)

**[Testimony of Frank Magers, for Defendant.]**

FRANK MAGERS, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

**TESTIMONY OF FRANK MAGERS.**

I am a brother of the witness who was last on the stand and live in Springdale, and am son of the gentleman who testified here in the plaintiff's case. It was somewhere about the 12th of January when we started to pile these ties on the right of way. I do not recall how many loads we brought in. We were piling them from then until about the 20th of February. I recollect how they were piled. We were skidding them out of the woods with a team and then put them on a sled and took them to the right of way and put them on the right of way on poles or ties or whatever we could find. At the

(Testimony of Frank Magers.)

time we hauled them out of the woods we just threw them in as we come to them, the small ones and the big ones. When we got down on the right of way we piled them one on top of the other. Where the wide ones came together they went together. If there was a narrow one underneath a big one they didn't come together. We brought in ties before. They were required to fill certain specifications in order to sell the ties with reference to length, width and general thickness. (111, 112) The length and width and thickness of these ties were according to specifications. They were to be seven inches thick, eight feet long and seven inch base on both sides and peeled. They were uniformly of that size. (113) I don't think there were any that were less than eight and one-half inches through the flat way. I expect the largest ones were some of them fourteen inches. They ranged from fourteen to eight and one-half inches. While we were piling these ties I never saw any children around on them while we were there. I didn't know of any of them playing upon these ties. I have piled ties there before on the right of way two seasons. (114)

Cross-examination.

Whereupon, upon cross-examination by Mr. Plummer, he [46] testified:

We got these ties seven miles out of town. We would bring in one load and then go back for another. Would only be on the ground for a very few minutes. Most of the time would be in the trips



(Testimony of Frank Magers.)

back and forth, loading up in the woods. I don't know what pile fell; we had two different piles there. I don't think some of these ties were hauled there in December. We started in the first part of January. (116) I am not positive about the exact time. My best recollection is that we started on the 12th of January. (117)

**[Testimony of D. S. Cameron, for Defendant.]**

D. S. CAMERON, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

**TESTIMONY OF D. S. CAMERON.**

I am tie inspector for the Great Northern Railway Company. Before that I used to buy timber and cut it into ties and sell to the company, and do a little logging sometimes. I am acquainted with and familiar with the method of piling ties upon the lines of other railroads than the Great Northern. I have no particular recollection of having inspected these particular ties at Springdale. In the course of a year I inspect maybe half a million of ties. In connection with these ties that I inspected upon our lines and in connection with ties that I have examined upon the lines of other roads, that have been piled up, I don't know that I have ever seen any that was braced to hold them up. (118) The usual method of piling ties on this road and other roads that I know of they were just piled up in the manner that the inspector can inspect them, even at both ends and up on top of each other; pile them up so

(Testimony of D. S. Cameron.)

that they won't take up the space in the yards. (119)  
They are piled up close together, supposed to be piled right up close.

Cross-examination.

Whereupon, upon cross-examination by Mr. Plummer he testified: [47]

In other words, they are generally piled up close together. They are usually piled up so as not to take up too much room. I suppose when you pile ties on top of each other they naturally will bind, because if you take a narrow tie six inches wide and put a wide one on top they will bind. (121)

[Testimony of F. E. Newton, for Defendant.]

F. E. NEWTON, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

TESTIMONY OF F. E. NEWTON.

I am a farmer living three and one-half miles east of Colville. At the time this boy got hurt I was in the livery business at Springdale. Came there in December, 1913, when I got the business from Stevens, Jimmey's father, the first of December, 1913. He went to Coulee City, where I traded him a ranch. (122) The Stevens boy was not around six weeks before this accident. He left on the 3d of December, after I took the business. I didn't see the accident. I heard the boy crying. I went down there and asked him what the matter was and "Can't you walk?" He says "No," and I says, "Did you try?" He said, "Yes," so I just picked him up and

(Testimony of F. E. Newton.)

took him home. I didn't go over to where the ties were, to pick them up or anything of that sort.

(123)

Cross-examination.

Whereupon, upon cross-examination by Mr. Plummer, he testified:

The ties were, I should judge, 25 or 30 feet from the edge of the street. (125)

**[Testimony of John Taylor, for Defendant.]**

JOHN TAYLOR, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

**TESTIMONY OF JOHN TAYLOR.**

At the time of the accident to Leslie I was standing in front of the livery barn in Springdale. I saw the boy get hurt. When the ties fell on the boy I ran over there and picked up one end of the tie and helped to get him out from under. There were three ties fell on him. I picked up one of the ties off of him. [48] We helped him over towards the depot, and he sat down there on a pile of dirt, and Mr Newton came along. (127)

Cross-examination.

Whereupon, upon cross-examination by Mr. Plummer, he testified:

George Williams was there. He was across by the depot at the time the accident happened, and I was down at the livery stable. He came over and I was over there and lifted the tie off. (128)



**[Testimony of Mally Ryan, for Defendant.]**

MALLY RYAN, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

**TESTIMONY OF MALLY RYAN.**

I am section foreman for the Great Northern Railway Company and have been for eleven years, located at Springdale. I was there during the winter of 1913-1914. I was notified of the accident to Leslie Willard shortly afterwards. I didn't see it. It is my business as section foreman to see that they keep the ties back, the clearance from the track. (129) After they have been piled on there we look them over and see that they don't get too many small ties on. They are piled there for inspection, for the company to load and distribute, for renewals for the road. We take these ties from off these piles and distribute them along the right of way wherever they are needed for the roadbed. The purpose in piling these ties in this particular way in which they are piled in these long piles facing the track, is to facilitate loading, make it handier to load them, and for inspection. I have loaded thousands of them. (130)

I have never seen children on the ties before this or since. I have seen them on the right of way. I have seen them come up to the depot. I have told them to get off of there.

**Cross-examination.**

Whereupon, upon cross-examination by Mr. Plummer, he testified:

(Testimony of Mally Ryan.)

My eyesight is good. I am not very much around the [49] depot. (131)

Redirect Examination.

Whereupon, upon redirect examination by Mr. Albert, he testified:

The conditions with reference to buildings and general situation there at Springdale were the same now as they were in 1914 in the winter.

Whereupon, upon the statement of Mr. Plummer, attorney for the plaintiff, that he had no objection to the introduction of the following photographs, Defendant's Exhibits 2, 3, 4, 5 and 6, they were admitted in evidence, are attached hereto and made a part hereof. (132)

Counsel for the defendant described the photographs as follows:

Defendant's Exhibit 2 is a view from the tracks looking south towards the livery barn; a little southwest. Defendant's Exhibit 3 is a view from the road looking south towards the livery barn, and taken just a little north of the tracks. Defendant's Exhibit 4 is a view taken from the depot platform looking east along the tracks.

Mr. PLUMMER.—The tank is east of the station, is it?

Mr. ALBERT.—Yes, the tank is east of the station.

Defendant's Exhibit 5 is a view taken from the livery barn looking towards the depot and Springdale. Defendant's Exhibit 6 is a view taken from

(Testimony of Mally Ryan.)

the livery barn looking northeast towards the water tank. I have marked an "X" on exhibit 4 about where the pile of ties referred to in the evidence was located. (133) The man standing on the left-hand side of the picture on Defendant's Exhibit 3 was where the pile of ties was supposed to have been. The man standing on the right-hand side is standing on the road. When these ties were piled there in that pile, in passing back and forth through there, I stopped and would go over there sometimes, and watch them, and see that those ties were [50] piled back.

Q. How were those ties piled?

A. Well, when they drove in they laid down their skids, then they throwed probably five or six ties, and probably more on the skids, one beside the other, and then started to pile up, and they kept on piling that way until they got eight. They go up gradually until they are finishing their pile, then they square it up. (134)

These piles cannot be piled up in separate tiers of eight each, and was never done to my knowledge. I saw this pile after it was completed. It was piled as they always pile them. They start in, lay the skid down, then they put in another tie as close to it as possible. This pile was piled in the same way. When they throw them ties off they had to make that bottom rank there, that is, the bottom row, and then they come along and up with it. It is impossible to pile a pile straight up without them falling at the



(Testimony of Mally Ryan.)

time, and these end ties that were piled near the end nearest the road, were just slightly canted toward the pile. After they distribute the ties to us we pile them in three cornered piles. There are fifteen ties piled in a pile and they are put that way to season, and then they are put in the track after they are seasoned. They are piled triangularly.

**Cross-examination.**

Whereupon, upon cross-examination by Mr. Plummer, he testified as follows:

These ties were piled in January about two years ago, in 1914. (135, 136) I noticed that the piles were piled back from the track. I have a particular recollection of this pile of ties because I went there to examine them where this boy was hurt. (137)

**[Testimony of C. W. Magers for Defendant (Recalled).]**

C. W. MAGERS, recalled as a witness on behalf of the defendant, testified as follows:

**TESTIMONY of C. W. MAGERS. [51]**

Direct Examination by Mr. ALBERT.

Q. Mr. Magers, just tell us how these ties were piled.

Mr. PLUMMER.—We object to that, if Your Honor please, on the ground he has already covered that matter with this witness, and it is repetition of the testimony. He was on the stand yesterday and told all about it, and we cross-examined him. I don't think it is fair, after the night has gone by, to put him on again now on the same subject.

(Testimony of C. W. Magers.)

Mr. ALBERT.—I don't think it is quite clear how these were piled, and I would like to show it to the jury, and get as much light on it as we possibly can.

Mr. PLUMMER.—Yes, I know, you did that yesterday. You cannot certainly dispute what he said yesterday.

The COURT.—The process was explained. I don't know just how they were piled.

Mr. PLUMMER.—He testified he piled one on top of the other.

Mr. ALBERT.—You cannot pile them any other way except one on top of another. (140)

The COURT.—Are all the witnesses here?

Mr. PLUMMER.—Our witnesses are not here, no. They have gone home. We thought this ground was covered, and we cannot dispute it. Our witnesses have gone back to Springdale.

Mr. ALBERT.—I think it is perfectly competent at this time to show just how these ties were laid down there, how these parties put them in.

The COURT.—It would be, under ordinary circumstances, unless advantage was taken of the other side, by reason of the fact that this matter was all gone over yesterday. These three witnesses were called and testified on the subject.

Mr. PLUMMER.—If there is any doubt I will ask the reporter to read the record of this witness. I examined him in [52] detail.

Mr. ALBERT.—They testified that the ties were piled one on the other, one on top of the other. That

does not show whether they were piled up in a straight line, or whether they were piled interlacing, or how they were piled.

The COURT.—If the witnesses for the other side have gone home, I don't think it would be fair to admit the testimony at this time. I will sustain the objection; that is, if it is going to conflict in any way with the testimony already given. (141)

Mr. ALBERT.—It won't conflict with his testimony at all.

Mr. PLUMMER.—And Mr. Albert suggested last night that he was practically through with his evidence, and we allowed our witnesses to go home.

The COURT.—I think I will sustain the objection.

Mr. ALBERT.—Exception.

Witness excused. (142)

**[Testimony of D. S. Cameron, for Defendant  
(Recalled).]**

D. S. CAMERON, recalled as a witness on behalf of the defendant, testified as follows:

**TESTIMONY OF D. S. CAMERON.**

Direct Examination by Mr. ALBERT.

Mark this. Paper marked Defendant's Exhibit 7 for identification.

Q. I show you Defendant's Exhibit 7 and ask you if that is the notice and specifications for ties that was posted and in force at that time—at the time of this accident.

A. Yes, that is the same circular we had out.

Mr. ALBERT.—We offer it in evidence.



(Testimony of D. S. Cameron.)

Mr. PLUMMER.—I wish to object to this, if Your Honor please, on the ground that it is wholly incompetent, irrelevant and immaterial. The question in this case is how the ties were piled, not how some notice said they should be. I don't know whether there is anything in here about piling. [53]

The COURT.—What is the purpose of the notice?

Mr. ALBERT.—The notice shows the specifications under which the ties were piled, and the instructions.

The COURT.—I will sustain the objection. (143)

Mr. ALBERT.—I don't care very much about it, but they hollered yesterday about our not producing it.

Exception.

Q. Your duties as tie inspector, do they relate to the question of inspection, as to the manner in which the ties are piled?

Mr. LAVIN.—We object to that as repetition, what his duties were.

The COURT.—He may answer. I don't recall what he did.

A. Somewhat, yes.

Q. To what extent?

A. To see so I can get the length of the ties.

Q. So that you can get the length of the ties?

A. The length of them, yes.

Mr. ALBERT.—That is all.

Mr. PLUMMER.—That is all.

Witness excused. (144)

**[Testimony of U. Sowa, for Defendant.]**

U. SOWA, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

**TESTIMONY OF U. SOWA.**

I am division roadmaster for the Great Northern and have been for the last six years, the second time. I have been connected with the Northern Pacific and the Butte, Anaconda & Pacific. In connection with my business with those roads and other roads I have observed the manner in which ties that are hauled in are piled. (145) I am acquainted with the conditions in Springdale and have been for the last year and a half. I was acquainted with them before that. [54]

Mr. ALBERT.—I think the testimony shows by the witness Mr. Ryan that the conditions were substantially the same.

The COURT.—Yes. (148)

Under those conditions the usual and ordinary and customary method of piling ties on the right of way are they are piled not less than eight feet from the nearest rail, endwise of the track, with flush ends, so that the inspector can see them and eight ties high. When they commence piling they throw skids on the ground and then from eight to ten ties, and then pile them as they come, in layers. They cannot be piled straight up and down in tiers.

**Cross-examination.**

Whereupon, upon cross-examination by Mr. Plummer, he testified:

They cannot be piled straight up and down in tiers

(Testimony of U. Sowa.)

on account of the ties are not the same width, all the ties. (149) Some of them are fourteen and sixteen inches wide. The narrowest ones are eight inches wide. You can set a fourteen inch tie on top of an eight inch tie, and you can set one on top of the other up to eight. I am testifying as to how they should be piled; they should be laid down on a string of skids, then another string on top of them, and so on up that way. (150) And in that way they would bind each other; there would be a hang over that would bind. That is the way they pile them. If they are bound they won't fall down.

Redirect Examination.

Whereupon, upon redirect examination by Mr. Albert, he testified:

I have no particular recollection of this particular pile of ties.

Mr. ALBERT.—Defendant rests.

Mr. PLUMMER.—We rest.

Whereupon the following proceedings were had:

**[Motion for Directed Verdict, etc.]**

Mr. ALBERT.—Defendant moves the Court to direct a [55] verdict for the defendant on the ground that no cause of action has been proven against the defendant, either as alleged in the complaint or otherwise; that defendant has not been shown to have been guilty of a breach of any duty toward the plaintiff; that the accident which happened to the plaintiff was caused by the act and negligence of himself and his companion, who was with



him, and not by reason of any negligence on the part of the defendant; that it is not shown that the ties in question were in their nature alluring or attractive to children, or that they were in and of themselves dangerous; nor has it been shown that even if they were not alluring or attractive to children, that although children played with them that they were obviously dangerous if children came in contact therewith; that defendant is entitled to a verdict in its favor on the evidence by the direction of the Court.

The COURT.—The motion is denied.

Defendant excepted to the ruling of the Court in refusing to direct a verdict, which exception was allowed by the Court.

Whereupon, arguments were made to the jury on behalf of the plaintiff and defendant.

Whereupon the Court instructed the jury. Thereupon the jury, having received the charge of the Court, and having retired to consider their verdict returned into open court with a verdict in favor of the plaintiff for damages in the sum of fifteen hundred dollars (\$1500.00).

Whereupon, upon the 26th day of January, 1916, judgment was entered in favor of the plaintiff and against the defendant, in the following language:  
[56]

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[Title of Court and Cause.]

**Judgment.**

This cause having heretofore come on regularly

for trial before the Court and a jury, plaintiff appearing in person and by his attorneys, Plummer & Lavin, and the defendant appearing through its attorneys, Charles S. Albert and Thomas Balmer, and said cause having been regularly submitted to the jury and the jury having retired to deliberate upon the verdict, and thereafter having returned their verdict into the court, awarding to the plaintiff the sum of \$1500.00.

It is hereby ORDERED, ADJUDGED and DECREED that upon the verdict of said jury, and the Court being fully advised in the premises, that plaintiff have and recover against defendant, the sum of \$1500.00 and his costs and disbursements hereafter to be taxed.

Done in open court this 26th day of January, 1916.

(Signed) FRANK H. RUDKIN,

Judge.

O. K. as to form.

CHARLES S. ALBERT and  
THOMAS BALMER,

Defendant's Attorneys.

**[Motion for New Trial.]**

Whereupon, upon the 31st day of January, 1916, the defendant herein served and filed its motion for new trial, in words as follows:

Now comes the above-named defendant, and moves the Court [57] for an order to set aside the verdict of the jury herein and grant a new trial of the above-entitled cause, upon the following grounds:

1. Excessive damages appearing to have been

given under the influence of passion or prejudice.

2. Insufficiency of the evidence to justify the verdict.

3. Error in law occurring at the trial and excepted to by the defendant.

4. That neither the evidence nor the testimony is sufficient to show, either directly or indirectly, that the defendant or anyone for whom it was responsible was guilty of any negligence, or that it was guilty of any breach of duty which it owed towards the plaintiff.

5. That the evidence is not sufficient to show that a cause of action has been proven against the defendant, either as alleged in the complaint or otherwise.

6. That the evidence is insufficient to show a cause of action against the defendant in that the accident which happened to the plaintiff was caused by the act and negligence of himself and his companion, who was with him, and not by reason of any negligence on the part of the defendant.

7. That the evidence was insufficient to support a cause of action against the defendant, in that it was not shown that the ties in question were in their nature alluring or attractive to children, or that they were in or of themselves dangerous, nor was it shown that even if they were not alluring or attractive to children, that if children played about them they were obviously dangerous if such children came in contact therewith.

8. That the Court erred at the trial in allowing the witness R. B. Willard to answer the question: "Do you know how many ties fell?" that the Court



erred in denying defendant's motion for nonsuit made at the close of plaintiff's case; that the Court erred in refusing to allow the witness C. W. Magers to [58] answer the question: "Mr. Magers, just tell how these ties were piled"; that the Court erred in refusing to admit Defendant's Exhibit 7 in evidence; that the Court erred in denying the defendant's motion to direct a verdict for the defendant at the close of all the testimony.

Said motion is based upon the pleadings and papers on file, upon the minutes of the court, including not only the clerk's minutes but any notes or memorandum which may have been kept by the Judge of the court in the trial thereof, and also the reporter's transcript of his shorthand notes of said trial.

Dated at Spokane, Wash., this 31st day of January, 1916.

(Signed) CHARLES S. ALBERT,

THOMAS BALMER,

Attorneys for Defendant.

Whereupon, upon the 7th day of February, 1916, said motion for new trial was taken up for hearing by consent of counsel, and said motion was presented to the Court.

Whereupon said Court made its order denying said motion for new trial, which order is as follows:

[Title of Court and Cause.]

**Order [Denying Motion for New Trial].**

This cause coming on to be heard upon defendant's motion for a new trial, the above-named de-

fendant appearing by Charles S. Albert and Thomas Balmer, its attorneys of record, in behalf of said motion, and the above-named plaintiff appearing by his attorneys Plummer & Lavin, in opposition thereto, after hearing said motion [59] and the Court being duly advised in the premises;

It is ORDERED that said motion be, and the same is hereby denied, to which ruling defendant excepts and exception is allowed.

Done in open court this 7th day of February, 1916.

(Signed) FRANK H. RUDKIN,  
Judge. [60]

**Defendant's Exhibit No. 7.**

**IMPORTANT CHANGES—READ CAREFULLY.  
NOTICE.  
GREAT NORTHERN RY.  
TIES.**

Will be purchased by this Company at its Option until further Notice as per Description, Price and Specifications given hereon, at all stations on the Spokane and Marcus Divisions of the Great Northern Railway in United States between Troy, Mont., and Dean, Wash., including all Main and Branch lines in limits described.

**SPECIFICATIONS**

ALL HEWED TIES must be peeled and of good round, sound, live timber, exactly eight (8) feet long, straight and well hewed on both sides, free from score hacks and of a uniform thickness, ENDS TO BE SAWED square and the hewed sides to be par-

allel and out of wind. Ties slabbed two sides accepted as hewed.

ALL TIES DELIVERED on this circular must be on basis of Eighty per cent (80%), Number Fifteen (No. 15) and Number Twenty-five (25), and Twenty per cent (20%) Number Sixteen (No. 16) and Number Twenty-six (26). All Number Sixteen (No. 16) and Number Twenty-six (26) ties in excess of twenty per cent (20%) must be removed from Right of Way. All culls and rejected ties not accepted must be removed from Right of Way.

Ties made from fire killed timber that is worm eaten will not be accepted.

Ties varying one inch or more under or over eight (8) feet long will not be accepted.

Tamarac and Red Fir ties filling the above specifications will be graded and paid for as follows:

#### PRICES.

##### TAMARAC.

No. 15 Hewed or Slabbed, Peeled, 7 in. face and over, 7 in. thick.....	37¢
No. 16 Hewed or Slabbed, Peeled, 6 in. face and over, 6 or 7 in. thick.....	22¢

##### RED FIR.

No. 25, Hewed or Slabbed, Peeled, 7 in. face and over, 7 in. thick.....	37¢
No. 26, Hewed or Slabbed, Peeled, 6 in. face and over, 6 or 7 in. thick.....	22¢

[61]

NOTE—Following instructions must be followed in piling ties on right of way:



Permission must be obtained at all stations at which there are Agents to pile ties on the Company's right of way, and Agent will designate place where they are to be piled. Ties must be piled at all stations or sidings between switches on skids at or above grade, convenient for loading.

They must be piled eight ties or more high with a space of three feet between ranks with the small end of each tie facing the track.

The first rank to be not less than eight feet from the nearest rail, and no ties shall be to exceed 50 feet from the track. All ties must be piled even on the ends so Inspector can see whether they are all of an even length.

No peeling of ties will be allowed on Company's right of way.

These instructions must be strictly followed or you will be required to furnish necessary help to re-handle the ties for their protection, economical handling when loading or for inspection.

Cards to show ownership of ties and address of owner will be furnished by the Purchasing Agent, Inspector or Station Agent. They must be filled out in ink, as provided for, and attached to each pile.

Any person or persons violating these terms will be considered trespassers, and will assume all risk and be held liable for all damage caused by their action. All ties put out in accordance with this circular **AND RECEIVED BY THE COMPANY** will be inspected monthly when practicable, commencing with September, 1913, and payments made within

thirty days after the month in which inspection is made.

F. A. BUSHNELL,  
Purchasing Agent.

St. Paul, Minn., September 1st, 1913.

WRITE IN FOR PRICES AND SPECIFICATIONS ON SAWED RED FIR AND TAMARAC TIES NINE (9) INCHES FACE, SEVEN (7) INCHES THICK, EXACTLY EIGHT (8) FEET LONG. [62]

Whereupon the defendant excepted to the rendering and entering of judgment in the above-entitled action, ordering and adjudging that the plaintiff herein have and recover of the defendant the sum of fifteen hundred dollars (\$1500.00), together with costs, dated and entered on the 26th day of January, 1916, and to said judgment, which exception was allowed by the Court.

Now, in furtherance of justice and that right may be done, the defendant presents the foregoing as its bill of exceptions in this case, and prays that the same may be cited, signed and certified by the Judge, as provided by law, and filed as a bill of exceptions.

(Signed) CHARLES S. ALBERT,  
THOMAS BALMER,  
Attorneys for Defendant.

Due service of the within bill of exceptions by a true copy thereof, is hereby admitted at Spokane, Washington, this 31st day of January, A. D. 1916.

(Signed) PLUMMER & LAVIN,  
Attorneys for Plaintiff. [63]

[Title of Court and Cause.]

**Order Settling Bill of Exceptions.**

Now, on this 7th day of February, 1916, the above cause coming on for hearing on the application of the defendant to settle the bill of exceptions in said cause; defendant appearing by Charles S. Albert and Thomas Balmer, its attorneys, and the plaintiff appearing by Messrs. Plummer & Lavin, his attorneys, and it appearing to the Court that the defendant's proposed bill of exceptions was duly served on the attorneys for the plaintiff within the time provided by law, and that no amendments have been suggested thereto by the plaintiff, and that the time for settling said bill of exceptions has not expired, and the Court having duly allowed said proposed bill of exceptions and the amendments thereto; and it further appearing to the Court that said bill of exceptions contains all the material facts occurring in the trial of said cause, together with exceptions thereto, and all the material matters and things occurring upon the trial, except Exhibits 1, 2, 3, 4, 5 and 6, introduced in evidence, which are hereby made a part of said bill of exceptions, and the clerk of this court is hereby ordered and instructed to attach the same thereto;

Therefore, upon motion of Charles S. Albert, attorney for the defendant,

It is hereby ORDERED, that said proposed bill of exceptions, with the amendments allowed by this Court, be, and the same [64] is hereby settled as



a true bill of exceptions in said cause, and that the same is hereby certified accordingly by the undersigned Judge of this court, who presided at the trial of said cause, that it conforms to the truth and that it is in proper form, and that it is a full, true and correct bill of exceptions, and the clerk of this court is hereby ordered to file the same as a record in said cause, and transmit the same to the Honorable Circuit Court of Appeals for the Ninth Circuit.

(Signed) FRANK H. RUDKIN,  
District Judge.

[Endorsements]: Bill of Exceptions. Filed in the U. S. District Court for the Eastern District of Washington, February 7, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [65]

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[Title of Court and Cause.]

**Petition for Order Allowing Writ of Error.**

Defendant in the above-entitled cause, feeling itself aggrieved by the rulings of the Court and the judgment entered on the 26th day of January, 1916, complains in the record and proceedings had in said cause and also of the rendition of the judgment in the above-entitled cause in said United States District Court against said defendant on the 26th day of January, 1916, that manifest error hath happened to the great damage of said defendant, petitions said Court for an order allowing the said defendant to prosecute a writ of error to the Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made

and provided and also that an order be made fixing the amount of the security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security, all further proceedings of this Court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

Dated this 16th day of February, A. D. 1916.

(Signed) CHARLES S. ALBERT,  
THOMAS BALMER,

Attorneys for Defendant. [66]

[Endorsements]: Petition for Order Allowing Writ of Error. Due service of the within petition by a true copy thereof is hereby admitted at Spokane, Washington, this 16th day of February, 1916. (Signed) Plummer & Lavin, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, February 16, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [67]

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[Title of Court and Cause.]

**Assignment of Errors.**

Comes now the defendant and files the following assignment of errors upon which it will rely in the prosecution of the writ of error in the above-entitled cause from the judgment made by this Honorable Court upon the 26th day of January, 1916, in the above-entitled cause.

## I.

That the United States District Court in and for the Eastern District of Washington, Northern Division, erred in denying the motion of defendant to direct a verdict in favor of the defendant, made at the close of all the evidence in the case, for the following reasons:

1. That no cause of action has been proven against the defendant.

2. That defendant has not been shown to have been guilty of the breach of any duty towards the plaintiff.

3. That the accident which happened to the plaintiff was caused by the acts and negligence of himself and his companion who was with him, and not by reason of any negligence on the part of the defendant.

4. That it was not shown that the ties in question were in their nature alluring or attractive to children, or that they were in or of themselves dangerous, nor was it shown that even if [68] they were not alluring or attractive to children, that although children played with them, they were obviously dangerous if children came in contact therewith.

5. That the defendant was entitled to a verdict on the evidence, by the direction of the Court.

## II.

That the Court erred in denying defendant's motion for a new trial, upon the following grounds:

1. Insufficiency of the evidence to justify the verdict.



2. Error in law occurring at the trial and excepted to by the defendant.

3. That neither the evidence nor the testimony was sufficient to show that defendant was guilty of any negligence or any breach of duty towards the plaintiff.

4. That the evidence was not sufficient to show that a cause of action had been proven against the defendant.

5. That the evidence was insufficient to show a cause of action against the defendant, in that the accident to the plaintiff was caused by his own negligence and that of his companion, and not by reason of any negligence on its part.

6. That the evidence was insufficient to support a cause of action against the defendant, in that it was not shown that the ties in question were in their nature alluring or attractive to children, or that they were in or of themselves dangerous, nor was it shown that even if they were not alluring or attractive to children, that if children played about them they were obviously dangerous if such children came in contact therewith.

7. That the Court erred in admitting and rejecting evidence, as is more fully set forth hereinafter in this assignment of errors.

### III.

That the Court erred in allowing the witness R. B. [69] Willard to answer the question:

“Do you know how many ties fell?” as follows:

“I can’t say positively, six, seven or eight, something like that, I can’t say.”

## IV.

That the Court erred in refusing to allow the witness C. W. Magers to answer the question:

“Mr. Magers, just tell how these ties were piled.”

## V.

That the Court erred in refusing to admit defendant's Exhibit 7 in evidence, which said Exhibit 7 is set forth in full in said bill of exceptions.

## VI.

That the Court erred in rendering and entering judgment in said action, in favor of the plaintiff and against the defendant.

WHEREFORE, the said Great Northern Railway Company, plaintiff in error, prays that the judgment of the District Court of the United States for the Eastern District of Washington, Northern Division, be reversed, and that said District Court be directed to grant said defendant a new trial in said action.

(Signed) CHARLES S. ALBERT,

THOMAS BALMER,

Attorneys for Plaintiff in Error, Defendant in Lower Court.

[Endorsements]: Assignment of Errors. Due Service of the Within Assignment of Errors by True Copy Thereof is Hereby Admitted at Spokane, Washington, this 16th day of February, 1916. (Signed) Plummer & Lavin, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, February 16, 1916, at 10:45 A. M. W. H. Hare, Clerk. By S. M. Russell, Deputy. [70]

[Title of Court and Cause.]

**Order Allowing Writ of Error.**

Upon motion of Charles S. Albert and Thomas Balmer, Esqs., attorneys for defendant, and upon filing a petition for writ of error and an assignment of errors:

It is ORDERED, that a writ of error be, and hereby is allowed, to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered herein, and that the amount of bond on said writ of error be and hereby is fixed at the sum of thirty-five hundred dollars (\$3500.00), which said bond may be executed by said defendant as principal, by its attorneys herein, and by such surety or sureties as shall be approved by this Court, and which shall operate as a supersedeas bond, and a stay of execution is hereby granted, pending the determination of such writ of error.

Dated this 16th day of February, 1916.

(Signed) FRANK H. RUDKIN,  
District Judge.

[Endorsements]: Order Allowing Writ of Error. Service of the Within Order by a True Copy Thereof is Hereby Admitted at Spokane, Washington, this 16th day of February, A. D. 1916. (Signed) Plummer & Lavin, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, February 16, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [71]



## [Writ of Error (Copy).]

The President of the United States of America, to the Honorable, the Judge of the District Court of the United States for the Eastern District of Washington, Northern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said District Court before you at the September, 1915, term thereof, between Leslie Willard, a minor, by Joseph J. Lavin, his guardian *ad litem*, plaintiff, and the Great Northern Railway Company, defendant, a manifest error hath happened, to the great damage of the said Great Northern Railway Company, plaintiff in error, as by its complaint appears;

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid and all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 4th day of March, next, in the said Circuit Court of Appeals, to be then and there held, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 16th day of February, 1916, of the Independence of the United States the one hundred fortieth year.

[Seal] (Signed) W. H. HARE,  
Clerk of the District Court for the Eastern District  
of Washington, Northern Division. [72]

Allowed by:

(Signed) FRANK H. RUDKIN,  
District Judge.

[Endorsements]: Writ of Error. Service of the Within Writ of Error and Receipt of Copy Thereof is Hereby Admitted this 16th day of February, 1916. (Signed) Plummer & Lavin, Attorneys for Defendant in Error. Filed in the U. S. District Court for the Eastern District of Washington, February 16, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [73]

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[Title of Court and Cause.]

**[Order Fixing Amount of Bond on Writ of Error.]**

Defendant, Great Northern Railway Company, having this day filed its petition for a writ of error from the rulings, decisions and judgment made and entered in said action to the United States Circuit Court of Appeals, in and for the Ninth Judicial Circuit, together with an assignment of errors within due time, and also praying that an order be made fixing the amount of security which it should give and furnish upon said writ of error, and that upon

the giving of said security all further proceedings in this court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals in and for the Ninth Circuit, and said petition having been this day duly allowed;

Now, therefore, it is ORDERED, that upon the said defendant, Great Northern Railway Company, filing with the clerk of this court a good and sufficient bond in the sum of thirty-five hundred dollars (\$3500.00), to the effect that if the said Great Northern Railway Company, plaintiff in error, shall prosecute said writ of error to effect, and answer all damages and costs if it fails to make its plea good, then the said obligation to be void, else to remain in full force and virtue, the said bond to be approved by the Court; that all further proceedings in this court be and they are hereby suspended and stayed until the determination [74] of said writ of error by the said United States Circuit Court of Appeals.

Dated this 16th day of February, 1916.

(Signed) FRANK H. RUDKIN,  
District Judge.

[Endorsements]: Order Allowing Bond. Due Service of the Within Order by a True Copy Thereof is Hereby Admitted at Spokane, Washington, this 16th day of February, 1916. (Signed) Plummer & Lavin, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, February 16, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [75]



[Title of Court and Cause.]

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS: That we, Great Northern Railway Company, as principal, and National Surety Company of New York, as surety, are held and firmly bound unto Leslie Willard, a minor, by Joseph J. Lavin, his guardian *ad litem*, in the full and just sum of three thousand five hundred dollars (\$3500.00), to be paid to the said Leslie Willard, a minor, by Joseph J. Lavin, his guardian *ad litem*, for which payment well and truly to be made, we bind ourselves, and our and each of our successors and assigns, firmly by these presents.

Sealed with our seals and dated this 16th day of February, 1916.

WHEREAS, lately at the September Term, A. D. 1915, of the District Court of the United States for the Eastern District of Washington, Northern Division, in a suit pending in said court between Leslie Willard, a minor, by Joseph J. Lavin, his guardian *ad litem*, plaintiff, and the Great Northern Railway Company, defendant, a final judgment was rendered against the said defendant, and the said defendant Great Northern Railway Company, having obtained from said court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to said Leslie Willard, a minor, by Joseph J. Lavin, his guardian *ad litem*, is about to be issued, citing and admonishing him to be and appear [76] at the United States Circuit Court of Appeals for the

Ninth Circuit, to be holden at the City of San Francisco, thirty days from and after the filing of said citation;

Now, the condition of the above obligation is such, that if the said Great Northern Railway Company shall prosecute its writ of error to effect and shall answer all damages and costs that may be awarded against it, if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and effect.

[Seal]

(Signed) GREAT NORTHERN RAILWAY  
COMPANY.

By CHARLES S. ALBERT and  
THOMAS BALMER,

Its Attorneys.

NATIONAL SURETY COMPANY.

By LESTER P. EDGE,  
Resident Vice-President.

E. F. BOOTH,

Resident Assistant Secretary.

Plaintiff is satisfied with the within bond and the surety thereon.

(Signed) PLUMMER & LAVIN,  
Attorneys for Plaintiff.

The foregoing bond is approved as to form, amount and sufficiency of surety, this 16th day of February, 1916.

(Signed) FRANK H. RUDKIN,  
Judge of the United States District Court, Eastern  
District of Washington.

[Endorsements]: Bond on Writ of Error. Due service of the within bond by a true copy thereof is hereby admitted at Spokane, Washington, this 16th day of February, 1916. (Signed) Plummer & Lavin, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, February 16, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [77]

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**[Citation on Writ of Error.]**

The President of the United States, to Leslie Willard, a Minor, by Joseph J. Lavin, His Guardian *ad Litem*, and to Messrs. Wm. H. Plummer and Joseph J. Lavin, His Attorneys, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Eastern District of Washington, Northern Division, wherein Leslie Willard, a minor, by Joseph J. Lavin, his guardian *ad litem*, is plaintiff and you are defendant in error, and the Great Northern Railway Company is defendant and is plaintiff in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the



United States of America, this 16th day of February, A. D. 1916, and the Independence of the United States the one hundred fortieth.

[Seal] (Signed) FRANK H. RUDKIN,  
United States District Judge for the Eastern District of Washington.

Attest: (Signed) W. H. HARE,  
Clerk.

[Endorsements]: Citation. Due Service of the Within Citation by True Copy Thereof is Hereby Admitted at Spokane, Washington, this 16th day of February, A. D. 1916. (Signed) Plummer & Lavin, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, February 16, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [78]

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[Title of Court and Cause.]

**Stipulation for Making Up Record.**

It is hereby STIPULATED between the plaintiff, by his attorneys, and the defendant by its attorneys, that the transcript of record on the writ of error in the above-entitled cause shall be made up of the following papers:

Complaint.

Answer.

Reply.

Verdict.

Defendant's Motion for New Trial.

Order Denying Motion for New Trial.

Judgment.

Bill of Exceptions.

Petition for Writ of Error.

Assignment of Errors.

Bond on Writ of Error.

Order Allowing Bond.

Order Allowing Writ of Error.

Stipulation as to Making Up Record.

Writ of Error.

Dated this 16th day of February, 1916.

(Signed) PLUMMER & LAVIN,  
Attorneys for Defendant in Error and Plaintiff.

CHARLES S. ALBERT,  
THOMAS BALMER,  
Attorneys for Plaintiff in Error and Defendant.

[Endorsements]: Stipulation for Making Up Record. Filed in the U. S. District Court for the Eastern District of Washington, February 16, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [79]

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[Endorsed]: No. 2753. United States Circuit Court of Appeals for the Ninth Circuit. Great Northern Railway Company, a Corporation, Plaintiff in Error, vs. Leslie Willard, a Minor, by Joseph J. Lavin, His Guardian *ad Litem*, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Eastern District of Washington, Northern Division.

Filed February 29, 1916.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

## [Writ of Error (Original).]

The President of the United States of America, to the Honorable, the Judge of the District Court of the United States for the Eastern District of Washington, Northern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said District Court before you at the September, 1915, term thereof, between Leslie Willard, a minor, by Joseph J. Lavin, his guardian *ad litem*, plaintiff, and the Great Northern Railway Company, defendant, a manifest error hath happened, to the great damage of the said Great Northern Railway Company, plaintiff in error, as by its complaint appears;

We being willing, that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid and all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco in the State of California, on the 4th day of March next, in the said Circuit Court of Appeals, to be then and there held, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of



the United States should be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 16th day of February, 1916, of the Independence of the United States the one hundred fortieth year.

[Seal]

W. H. HARE,

Clerk of the District Court for the Eastern District of Washington, Northern Division.

Allowed by

FRANK H. RUDKIN,

District Judge.

Service of the within writ of error and receipt of copy thereof is hereby admitted this 16th day of February, 1916.

PLUMMER & LAVIN,

Attorneys for Defendant in Error.

[Endorsed]: 2344. In the District Court of the United States for the Eastern District of Washington, Northern Division. Leslie Willard, a Minor, by Joseph J. Lavin, His Guardian *ad Litem*, Plaintiff, vs. Great Northern Ry. Co., Defendant. Writ of Error. Filed in the U. S. District Court, Eastern District of Washington. Feb. 16, 1916. Wm. H. Hare, Clerk. S. M. Russell, Deputy.

No. 2753. United States Circuit Court of Appeals for the Ninth Circuit. Filed Feb. 29, 1916. Frank D. Monckton, Clerk U. S. Circuit Court of Appeals, for the Ninth Circuit. By Paul P. O'Brien, Deputy Clerk.



9  
NO. 2753.

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# United States Circuit Court of Appeals

*For the Ninth Circuit.*

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GREAT NORTHERN RAILWAY COMPANY,  
a corporation,

*Plaintiff in Error,*

*vs.*

LESLIE WILLARD, a minor, by JOSEPH J.  
LAVIN, his *Guardian ad Litem*,

*Defendant in Error.*

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## BRIEF OF DEFENDANT IN ERROR.

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*Upon Writ of Error to the District Court of the  
United States, Eastern District of Wash-  
ington, Northern Division.*

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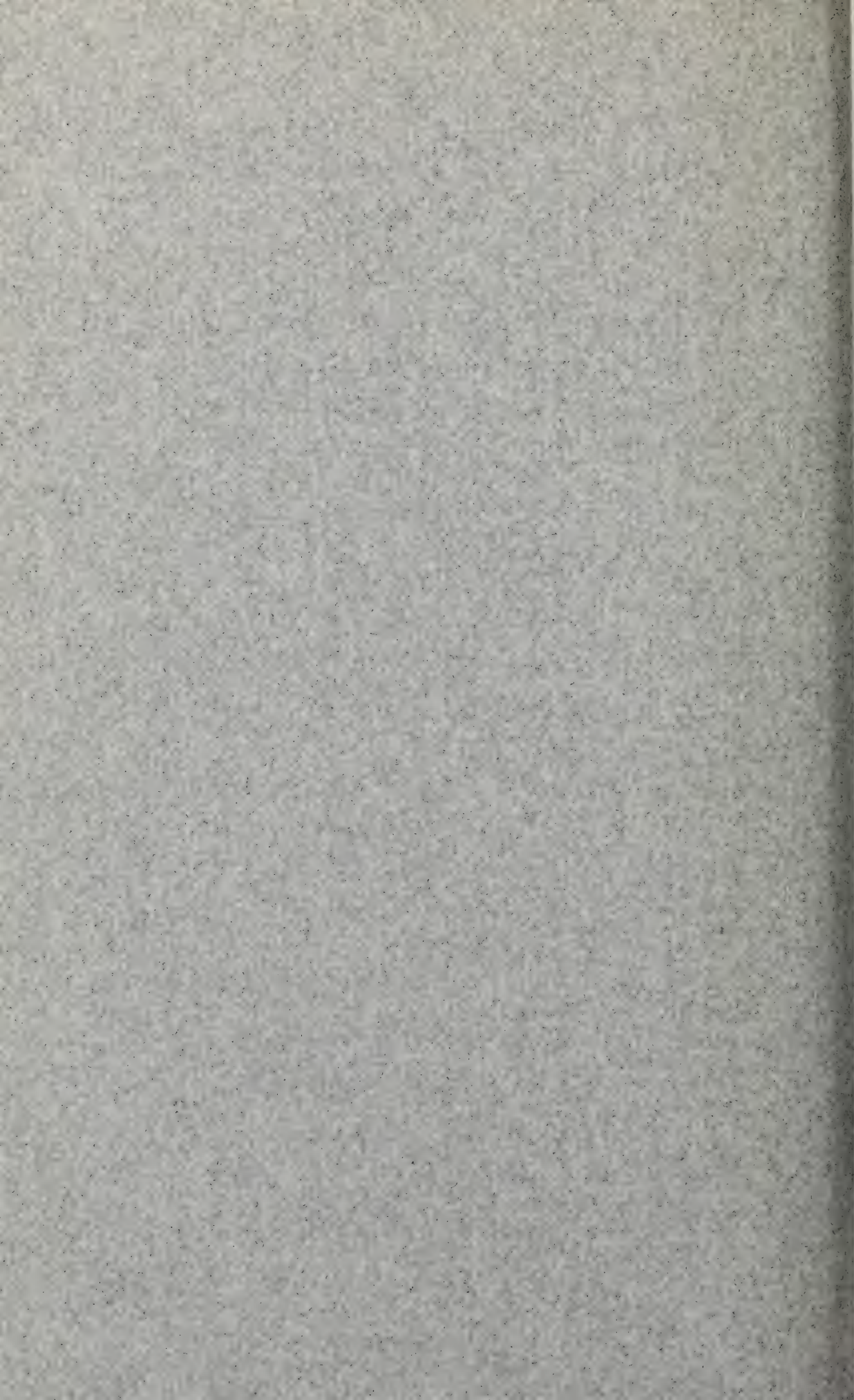
PLUMMER & LAVIN,  
*Attorneys for Defendant in Error,*  
509 Mohawk Building,  
Spokane, Wash.

File

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F. D. Monch





NO. 2753.

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# United States Circuit Court of Appeals

*For the Ninth Circuit.*

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GREAT NORTHERN RAILWAY COMPANY,  
a corporation,

*Plaintiff in Error,*

*vs.*

LESLIE WILLARD, a minor, by JOSEPH J.  
LAVIN, his *Guardian ad Litem*,

*Defendant in Error.*

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BRIEF OF DEFENDANT IN ERROR.

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*Upon Writ of Error to the District Court of the  
United States, Eastern District of Wash-  
ington, Northern Division.*

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PLUMMER & LAVIN,  
*Attorneys for Defendant in Error,*  
509 Mohawk Building,  
Spokane, Wash.

This is an action brought by Leslie Willard, a minor, through his *Guardian ad Litem*, against the Great Northern Railway Company, to recover damages for personal injuries. Trial of the cause resulted in a verdict in favor of plaintiff, and from the judgment entered thereon, this appeal is prosecuted.

Briefly stated, the facts are substantially as follows: The minor plaintiff resides at Springdale, Washington, a town on defendant's line of railway, in the State of Washington, at which point the railway company owns and uses in connection with its line of railway, depot grounds and switch yards. About 100 feet east of the depot is a public crossing; and the town being situate on both sides of the track, this crossing furnishes the only means of ingress and egress from one section of the city to the other (Tr. 14-35). The school is located on the north side of the track and school children use the roadway and crossing daily (Tr. 35). In the early part of January, 1914 (Tr. 36), defendant purchased and had delivered upon its right of way, a large number of hewn railway ties, which were unloaded and piled upon the right of way of the company, a few feet east of the public high-



way referred to (Tr. 20). The ties were piled eight ties high (Tr. 14), the end nearest the roadway being straight up and down, one on top of the other (Tr. 19). The ties were from six inches to fourteen inches wide on the face (Tr. 41), were not of uniform height or width (Tr. 41) and a wide tie was set upon a narrow tie, and *vice versa*, just as they were reached (Tr. 41). The ties were covered with snow and ice and were placed upon snow at the bottom, from 10 to 12 inches deep (Tr. 41). The men who unloaded the ties, admitted they were not piled solidly (Tr. 43). In many places, there were spaces of from three to eight inches between the ties contained in the pile (Tr. 16, 19, 31, 37). No one, on behalf of the railway company, directed the manner in which the ties should be piled (Tr. 40) and the section foreman of the company was present, part of the time, while the ties were being unloaded from the wagons, or sleighs, and piled (Tr. 40). The ties were not secured, braced or bound in any manner (Tr. 20, 37, 41). The division roadmaster, called as a witness by the railway company, testified that if the ties were bound, they would not fall (Tr. 64).

The ties were 100 feet east of the depot and across the track and could easily been seen from

the depot, where the railway company employed an agent and operator (Tr. 30, 36, 38, 39, 40). Without objection on the part of the company, numerous small boys, ranging in age from 10 to 16 years, played in, upon and about the pile of ties, engaging in such games as "wood tag" and "hide-and-seek," during the day, for hours at a time, during all of the time the ties remained there (Tr. 29-30, 31, 32, 33-34).

On February 23rd, 1914, the minor plaintiff, aged at that time ten years, in company with a boy of about the same age, got upon the pile of ties for the purpose of playing "wood tag" (18) when the end of the pile nearest the roadway gave way and fell, and one of the ties weighing 300 pounds (Tr. 36, 37) fell upon the right leg of plaintiff, inflicting severe and permanent injury, causing a bony formation at the knee joint, rendering the leg stiff and crippled.

After verdict, motion for new trial was filed, argued and overruled; judgment was entered upon the verdict, and this appeal is prosecuted upon numerous assignments of error (Tr. 76, 77, 78), none of which possess substantial merit; and all

of which were vigorously urged before the trial court and promptly overruled.

The assignments of error, as presented, embrace numerous repetitions, but are properly and fairly grouped as follows:

1. That no cause of action was proved, or that no negligence upon the part of defendant was shown.

2. That the ties were not alluring or attractive.

3. That they were not dangerous.

4. That minor plaintiff himself was guilty of negligence.

5. That the court erred in permitting witness R. B. Willard to testify as to the number of ties that fell.

6. That the court erred in permitting witness C. W. Magers to answer the question, "Mr. Magers, just tell how those ties were piled."

7. That the court refused to admit defendant's Exhibit 7 in evidence.

For the sake of brevity and to make manifest the frivolous assignments of error here brought for your Honors' consideration, these assignments



will not be discussed in order, but will be taken up, beginning with the last assignment first.

### Assignment 7.

The exhibit which the court refused to admit, is a notice issued by the company containing specifications governing the size and character of ties which the company desired to purchase, and requires certain things to be performed by the persons who sell and deliver ties to the company. So far as the minor plaintiff in this case is concerned, the exhibit is immaterial and self-serving. The failure of the men who delivered the ties, to comply with its requirements, if they did fail, could make no difference as far as this action is concerned. The negligence here complained of was in permitting the pile of ties to become dangerous, and in permitting children of tender years to play upon and about them, and the railway company cannot absolve itself from responsibility by attempting to show that some third party violated some rule or regulation of the company resulting in injury to a person not a party to nor in any way connected with or concerned in their private arrangements.

## Assignment 6.

C. W. Magers was called as a witness on behalf of plaintiff; it was he who sold and delivered the ties in question to the railway company. His testimony is found at pp. 38-42 of the Transcript, where he specifically described in detail upon direct and cross examination the manner in which the ties in question were piled. He was recalled by defendant during the presentation of their case (Tr. 59) and was asked the question referred to, to which objection was properly sustained. If what has so far been said, fails to disclose the manifest frivolous nature of the assignment now predicated upon the court's refusal to permit an answer to the question, so fully gone over during his original testimony, then from p. 61 of the Transcript, we quote as follows:

THE COURT: \* \* \* I will sustain the objection; that is, if it is going to conflict in any way with the testimony already given.

MR. ALBERT: *It won't conflict with his testimony at all.*

The only purpose therefore, would be at most, a repetition of his former testimony and the objection was properly sustained. If the subject was gone over thoroughly when the witness was called

by plaintiff, as the record discloses (Cross Examination by Mr. Albert, Tr., p. 41) and under the remark of counsel referred to, "it won't conflict with his testimony at all," there can possibly be no serious complaint now made that the court erred in rejecting the proffered testimony.

#### Assignment 5.

There was no dispute that the ties fell, nor was there any dispute that the fall of the ties resulted in injury to plaintiff. The number that fell is immaterial except that it is some evidence of the negligent manner in which the ties were piled. The plaintiff testified that from six to nine ties fell (Tr., p. 15). Witness Williams, does not state the exact number of ties that fell, but says he picked the "ties" off of the boy (Tr., p. 35), and when recalled (Tr., p. 46), says a part of two tiers fell. R. B. Willard, father of the minor plaintiff, visited the scene of the accident the following day and was permitted to testify that six, seven or eight ties fell (Tr., p. 46) and that "there was part of two tiers fell, and they were eight ties high" (Tr., p. 46). Witness Cline, called by defendant, said three ties fell (Tr., p. 48). With no evidence that the conditions had changed, and



the ties which he testified to having been upon the ground at the time, it was a circumstance which the jury had a right to consider as bearing upon the number of ties that fell, if the number that fell had any materiality. The same facts were testified to by other witnesses, and therefore is cumulative, and no legitimate claim can be made that in permitting the witness to answer, the court committed prejudicial error.

#### Assignment 4.

This assignment involves the negligence of the minor plaintiff. To argue it would be to waste the time of this court, already greatly overburdened. It is absolutely without merit and at most was a question to be determined by the jury under appropriate instructions, which were given and of which no complaint has been or is now made.

#### Assignment 3.

This assignment and assignment 1, will be hereafter discussed together as they embrace the same question.

#### Assignment 2.

Counsel complain in this assignment that evidence does not show that the ties in question were

not alluring or attractive. The testimony of Harry Whitney (Tr. 29, 30), evidences that he, together with four or five boys played together upon the ties two and three times a day, nearly all winter "just for fun, playing 'wood tag.'" Claire Willard, brother of the minor plaintiff, testified that he and three or four other boys played upon the ties at numerous times (Tr. 31). Clifford Ragsdale, says he played upon the ties two or three times a day with from two to three boys, playing "wood tag" upon the pile of ties, for a period of about two months (Tr. 32). Ervin LaFrance testified that he, in company with two or three other boys, played "wood tag" upon the ties for about a month (Tr. 33). Frank Venhuis testified that he saw five and six boys playing "hide-and-seek" and "cross tag" on the ties almost daily for two or three months.

A reading of the testimony above referred to is totally destructive of the contention of defendant that the evidence fails to disclose that the ties in question were not alluring or attractive to children and renders useless and to no avail, any further discussion upon the subject.

## Assignments 1 and 3.

Before proceeding with a discussion of these two assignments, Your Honors' attention is respectfully directed to the record brought here for your consideration, which evidences the dangerous condition of the property of defendant, the fact that such premises and the pile of ties here concerned were alluring and attractive to children of tender years, who in the pursuit of pleasure and who following the childish instincts of nature, played the games that all boys, now and ever have played, and further evidences that for at least two months prior to the happening of the accident which forms the subject matter of this case, the defendant knew that the pile of ties were being used as a playground by children. The doctrine through which defendant would seek to absolve itself from liability in this case, is that the minor plaintiff was a trespasser to whom they owed no duty, and thereby ask this court to abandon the principles of humanity and public policy heretofore adopted by this court, and to ask this court to leave entirely out of view the tender years, lack of judgment and infirmity of understanding and comprehension of the child, and thus supplant



property above humanity. Such doctrine has, by this court, and numerous courts of accredited respectability, been dominated as cruel and barbarous, and unworthy of a civilized jurisprudence. They would further visit upon the minor plaintiff the consequences of his trespass, in which they acquiesced to such an extent as to amount to an implied invitation, as though he were of mature years and in the possession of faculties capable of learning and appreciating the dangers which beset him. But such claim lacks logic, and in not the settled law. The rule properly stated, of which there can be no logical dispute deduced from the authorities, briefly stated, is to the effect that, the owner of property or premises, which, from their nature are particularly attractive to children, who in obedience to their childish instincts are likely to play in, upon and about such premises, involving danger to them is under the duty of exercising reasonable care to the end of keeping such premises in such a condition as to prevent them from injuring themselves. The evidence here brought for your consideration, convincingly establishes every element involved in that abstract and accurate statement of the law. The ties were attractive and alluring to children; they played upon and

about them in large numbers, daily, they were dangerous and defendant exercised absolute indifference and lack of care for their protection.

In the case of *St. Louis & S. F. R. Co. v. Underwood* (Fifth Circuit), 194 Fed. 363, a minor was injured by the fall of a pile of lumber, around and about which the defendant permitted children to play. There was a verdict for the plaintiff, which was affirmed upon appeal, the court, at page 364, adopting the following language:

“Examination of the testimony makes it evident that the material allegations of the declaration are supported by the proof. That the conduct of defendant, in placing lumber in an exposed situation and easily accessible to children of tender years, constitutes actionable negligence, plainly appears by reference to the following authorities.” (Citing cases.)

In *Union Pacific Ry. Co. v. McDonald*, 152 U. S. 262, 38 L. Ed. 434, Mr. Justice Harlan quotes the following language used by Chief Justice Cooley in *Powers v. Harlem*, 53 Mich. 507, 19 N. W. 257, as follows:

“Children, wherever they go, must be expected to act upon childish instincts and impulses; and others, who are chargeable with a duty of care and caution towards them, must calculate upon this, and take precautions ac-

cordingly. If they leave exposed to the observation of children, anything which would be tempting to them, and which they, in their immature judgment might naturally suppose they were at liberty to handle or play with, they should expect that liberty to be taken."

In *Snare & Triest Co. v. Friedman* (Third Circuit), 169 Fed. 1, the defendant piled eye-beams upon the sidewalk. These beams weighed 1000 pounds each, and after being so piled, permitted children to play upon and about them. A minor was injured by the fall of one of the beams, and after action and recovery a verdict for plaintiff was affirmed. *The fact that the beams were placed upon a public sidewalk was not a controlling influence in the case*, but the case was determined upon the negligent conduct of defendant in permitting the beams to be carelessly piled at a point frequented by children for recreation, and the court held that the defendant was guilty of negligence, and that a duty was owed to children, who, to their knowledge, were accustomed to play and sit upon the beams, to use reasonable care under the circumstances to prevent the piles from being in an unstable condition, as would be liable to cause injury to such of these children as might come in



contact therewith. In this case, numerous authorities are collected and referred to.

In *Pierce v. Lyden* (Second Circuit), 157 Fed. 552, the defendant stored oil in barrels from which the heads had been knocked off, in an unlocked shed and for some time, with the knowledge of the watchman of defendant, permitted boys to dip oil from the barrels in tomato cans and other receptacles, and light it on the ground, or throw it upon fires they had started. Plaintiff, a minor, while playing with other boys, was injured by the explosion of oil which was thrown upon the fire. The judgment of the lower court in plaintiff's behalf, was affirmed, the court saying:

“Knowledge of such a notorious and continuous practice as is shown in this case, we think must be imputed to the defendant, and, were this not so, then the knowledge of the night watchman was the defendant's knowledge. Nothing is more attractive to boys than fire, and as they had been for some six months in the habit of throwing the defendant's oil upon fires made by them, and this fact was actually known to the night watchman, we have no doubt that the question of defendant's negligence was properly presented to the jury.”

In *Branson's Admr. v. Labrot* (Kentucky), 50 Am. Rep. 193, the defendant piled lumber in a

city, on an unfenced lot which the public were accustomed to cross and children to play upon, in a negligent manner, so that it fell and killed an infant who played upon it. The lower court sustained a demurrer to the complaint and on appeal, the cause was reversed and remanded, the court holding that it was the duty of defendant, in placing timber upon the lot, to do so in such manner as to make it reasonably safe and secure against injury to children coming thereto, and that the owner should reasonably anticipate such injury to flow therefrom as actually happened. It likewise held, that in such cases the question of negligence is for the jury.

In *Price v. Atchison Water Co.*, 50 Pac. 450 (Kansas), the court says:

“Where a person maintains upon his premises anything dangerous to life and limb, and of a nature to invite the intrusion of children, he owes them a duty of precaution against harm, and is liable to them for injury from that thing, even though their own act, if not negligent, puts in operation the hurtful agency.”

It may be contended by plaintiff in error, as it was upon oral argument in the court below, that the act of the minor plaintiff and his companions

caused the ties to fall. But such is not true. The minor plaintiff testified he had gotten upon the ties, and was upon his knees when they fell and that his companion was at the other corner on the end of the ties (Tr. 18). His companion, called by defendant, testified that the injured minor was not upon the top of the pile of ties when they fell. The question of negligence was submitted to the jury under appropriate instructions, of which no complaint is now, or has been made, and this court cannot say whether the jury adopted the theory of the minor plaintiff, or that testified to by defendant's witness. In any event, it would make no difference so far as the liability of the defendant is concerned, and this question is mentioned only because of the assignment of error, and the oral argument made below. The same claim was made in *Pierce v. Lyden* (*supra*) where plaintiff contended that the minor was injured by the explosion of oil thrown upon the fire by one of his companions, and where the witnesses for defendant claimed he was injured by running through the burning oil. The defendant there contended the negligent act of the minor was the proximate cause of the accident. The court, passing upon this question, said at page 553:



“The third assignment of error may be laid out of the case at once, because there is nothing to show that the jury arrived at their verdict by adopting the account that the minor plaintiff was injured as the result of another boy’s throwing a can of oil on the fire. They may have adopted the other testimony that he was injured as a result of running and jumping through the flames of oil burning on the ground.”

This court has heretofore dealt with a state of facts peculiarly applicable and analagous to those here concerned. The writers of this brief, in exhaustive briefs, and in oral argument, presented like questions fully to this court in the recent case of *Thompson v. Coeur d’Alene Lumber Company*, 215 Fed. 8. The decision in that case, seems to settle the principles of law contended for by us, and thus renders unnecessary the further discussion of the case at bar.

In view of the record and the rule of law heretofore announced by this court, we insist that there is here involved a plain question of fact, submitted to a jury under appropriate and unquestioned instructions, and that in view of the absence of error, the finding of the jury upon such questions should be conclusive.

We respectfully urge an affirmance of the judgment.

PLUMMER & LAVIN,  
*Attorneys for Defendant in Error.*







